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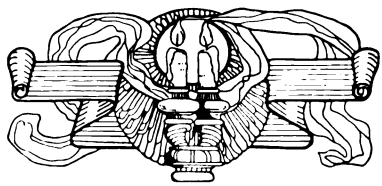

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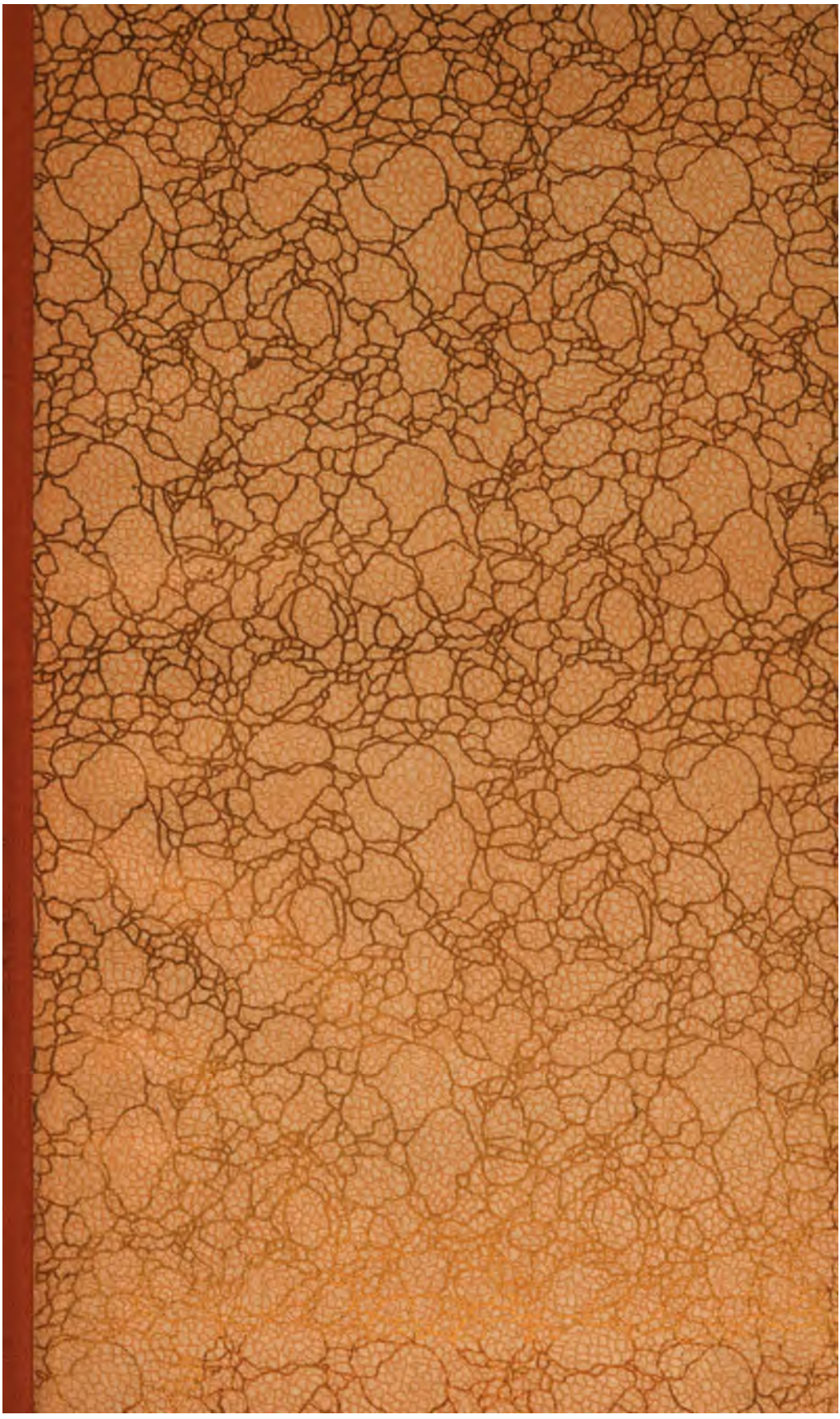

U. S.

CHAMIZAL ARBITRATION

THE COUNTERCASE

OF THE

UNITED STATES OF AMERICA

BEFORE THE

INTERNATIONAL BOUNDARY COMMISSION

UNITED STATES–MEXICO

HON. EUGENE LAFLEUR, PRESIDING

UNDER THE

PROVISIONS OF THE CONVENTION BETWEEN
THE UNITED STATES OF AMERICA AND
THE UNITED STATES OF MEXICO
CONCLUDED JUNE 24, 1910

With Appendix and Portfolio of Maps

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COUNTERCASE OF THE UNITED STATES OF AMERICA BEFORE THE INTERNATIONAL BOUNDARY COMMISSION, THE HONORABLE EUGENE LAFLEUR PRESIDING.

THE SCOPE OF THE COUNTERCASE.

The Case of the United States set forth at some length the understanding of this Government as to the function of the "case" under the provisions governing the present arbitration.[a] This discussion need not be here repeated except to say that the conclusion was reached that the "case" called for by the convention was analogous to a declaration or complaint in municipal law, accompanied by the evidence upon which it was based and that accordingly the case of the United States would be narrative in form, generally chronological in arrangement, and would make no effort either to argue the law or marshal the facts.

In accordance with this general view the Countercase, like the Case, is in the nature of a pleading, setting up whatever additional facts may be thought necessary to answer the Case and evidence of the other party and is accompanied in turn by the documents upon which it is based.

In the contemplation of the United States, moreover, the countercase should also, as far as practicable, notice any points of agreement between the two Governments, indicate the contentions of the other party which are not believed to be material; set up any additional positions which it is desired to take in view of the case presented by the other Government, and in general define as clearly as may be the issues of law and fact which are to be argued before the court. The discussion of these latter questions is, in the absence of what seems to be sufficient reason for departing from this general scheme in particular matters, reserved for the printed and oral arguments which would seem to offer ample opportunity for the citation of authorities and the discussion of principles as well as for marshaling the facts and making deductions therefrom. Such at least is the view respectfully submitted by the United States.

An examination of the Case of the United States of Mexico, however, shows that in addition to the exposition of facts from the Mexican viewpoint therein contained, the greater portion of the Mexican Case consists in argument of the various questions of law and fact deemed by the learned Agent of Mexico to be

[a] See U. S. Case. Procedure under convention "The Case," pp. 4–7.

involved in the case to be decided. Notwithstanding the temptation thus held out by the Mexican Case to embark upon the argument at this stage of the proceedings, the United States believes that both the provisions of the treaty of June 24th, 1910, and the necessities of an orderly presentation of the case require that the United States follow the line which it has marked out for itself.[a]

RECIPROCAL INSPECTION OF DOCUMENTS, ETC.

With a view to facilitate the proceedings of the tribunal and to avoid as far as possible the necessity of producing certified copies of a large number of documents with regard to the most of which no question of the accuracy of the documents as reproduced in the respective cases and countercases would be likely to arise, and at the same time to provide for an easy and convenient way of correcting the inadvertent inaccuracies necessarily attendant upon the reproduction and translation of so many documents from manuscript originals in the limited space of time necessary to meet the requirements of the terms of submission, the Agent of the United States proposed to the Agent of Mexico an arrangement for the reciprocal inspection in advance of the meeting of the tribunal of the documents printed and relied on in the respective cases and countercases.[b] This proposition has been accepted by Señor Casasus with the understanding that the agreement should go into effect upon the 15th of April, the date for the filing of the countercases.[c] Not having as yet had the advantage of this inspection for the correction of inadvertent errors and discrepancies, the United States deems it advisable specifically to reserve the right to bring to the attention of the tribunal at some appropriate opportunity later on in the proceedings any material errors or discrepancies which may be discovered either in the documents and translations presented by the United States or presented by Mexico. Particularly the United States deems it advisable to point out that there are numerous discrepancies, generally immaterial, but sometimes going to matters of substance, between the English version of the journals of the Boundary Commission sitting under the treaties of 1848 and 1853, printed in the appendix to the Mexican Case, and the signed originals in the possession of the United States. Nevertheless, it has not been deemed necessary to encumber the record by printing the original journals in the archives of the Department of State signed by the United States

[a] See Case of the United States, pp. 4–7.

[b] Mr. Dennis to Señor Casasus, March 18, 1911, U. S. Countercase Appendix, p. 3.

[c] Señor Casasus to Mr. Dennis, April 5, 1911, U. S. Countercase Appendix, p. 6.

Commissioners, inasmuch as it is thought that the discrepancies between the two versions can be detected upon the reciprocal inspection, and matters of substantial difference can be brought to the attention of the Court as deemed necessary, if in the course of the trial passages in which such substantial discrepancies occur appear to be deemed of importance.

The United States has, however, printed in the appendix to the countercase the instructions to the American Commissioners and three journals of Commissioners Emory and Salazar[a] under the Treaty of 1853, namely, the journals of June 24, 1856, September 21, 1857,[b] and September 30, 1857,[c] which were omitted from the journals printed in the Mexican Case.

Article 9 of the arrangement concluded between the two Agents reads as follows:

"9. That it is agreed by both Agents that subject to any order which the International Boundary Commission, acting upon its own initiative may make in the premises, both Agents waive the production at the trial of the following,"[d] etc.:

It will be observed that this article is careful to avoid any suggestion of attempting in any wise to limit the scope of the authority of the International Boundary Commission upon its own motion to direct the production of the originals or certified copies of the documents printed or relied on by either party. Moreover it will be noted that the reciprocal arrangement for the inspection of documents made by the two agents relates only to the documents printed or relied on in the respective cases and countercases. However, the authority conferred upon this honorable tribunal, by Article 7 of the Convention of 1889 constituting the International Boundary Commission, is much broader than this. That article provides that "The International Boundary Commission shall have power to call for papers and information, and it shall be the duty of the authorities of each of the two countries to send it any papers that it may call for relating to any boundary question in which it may have jurisdiction in pursuance of this convention." The United States submits itself wholly to the Commission as regards the subject-matter of this article, as of all other provisions of the conventions governing the arbitration, and invites the tribunal to make the fullest and freest use thereof, so far as papers and information within the custody or control of the United States are concerned.

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[a] See U. S. Countercase Appendix, p. 59.

[b] Ibid., p. 62.

[c] Ibid., p. 63.

[d] Mr. Dennis to Señor Casasus, March 18, 1911, U. S. Countercase, p. 3.

HAS MEXICO ENTIRELY ABANDONED THE ISSUE OF "AVULSION OR EROSION?"

The Mexican case appears to have abandoned the contention upon which Mexico rested her claim in the Chamizal case before the International Boundary Commission in 1894–1896, namely, that the Chamizal tract was thrown upon the American side of the Rio Grande through an avulsive change in the current of the river. It is true that in various places in the Mexican case, language is used which, taken by itself, might seem to indicate that Mexico still holds to the avulsive theory. These passages in the Mexican case, so far as noted, are as follows:

The first paragraph of the Mexican case speaks of the Chamizal tract as "segregated" on the right bank of the Rio Grande and "situated today on the opposite bank, due to the effects of various and sudden changes which for some years the current of the said river suffered." [a]

Subsequently, in making the statement that the Chamizal tract was "passed over to the left bank of the river," the Mexican case speaks of the "violent and sudden changes of the Rio Grande or Bravo del Norte, principally in the years 1864, 1868 and 1873."

Again, the Mexican case uses the following language: "The action of the waters of the said river (the Rio Grande) sudden and violent at the time of certain swells, such as those of 1864, 1868 and 1873, caused a portion of it (the Garcia estate) to be segregated from the right side and to finally remain on the left side of the river." [c]

Further on, the Mexican case says: "The result is as appears from the declarations of witnesses taken before the District Court of El Paso del Norte in 1894, and before the Joint Boundary Commission, that the destruction of the right side almost wholly took place during the great swells in the years 1864, 1868 and 1873." [d]

The Mexican agent thereupon enters upon a somewhat detailed examination of the testimony given in the District Court of Ciudad Juarez in 1894 and before the International Boundary Commission at the first trial of the Chamizal case. He sums up his contention as to the result of this testimony in the following language: I. "That the tract known by the name of "El Chamizal" and which was situated on the Mexican bank of the Rio Grande or Bravo del Norte, by reason of the segregation of the right bank, finally resulted joined to and incorporated with the

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[a] Mexican case, p. 1.
[b] Ibid., p. 4.
[c] Ibid., p. 5.
[d] Ibid., p. 6.

Concession Ponce de Leon, which is situated on the left side of the river."

II. "That the changes which produced the above results were not effected successively and annually from the years 1852 to 1873, but at fixed times, when great swells came on as those which took place principally in 1864, 1868 and 1873."[a]

In the next sentence the Mexican case refers to "each time that sudden changes in the course of the Rio Grande or Bravo del Norte took place."[a]

But, in summing up this portion of the Mexican case, the Mexican agent uses language which seems to indicate that the purpose of these various statements, with respect to "sudden changes" and "great swells" was not to set up an avulsive change in the course of the river, in a technical sense, nor was this language used merely for the purpose of maintaining an apparent consistency with the Mexican position in 1894–1896. The principal purpose as stated appears to be to fix the time at which the change took place, so as to show that it took place before the signature of the Treaty of 1884. Says the Mexican case: "The whole of this study of the Washington Convention of the 12th of November, 1884, which, we have undertaken, denotes that as the changes which the Rio Grande or Bravo del Norte suffered at the point which separates the two towns, El Paso, Texas, and Ciudad Juarez, have their origin and were claimed by the Mexican Government before the date of its celebration, its precepts are not and cannot be applicable."[b]

Again, in his conclusions, the Mexican agent says: "In order to prove the first point, that is, that the case called 'El Chamizal,' sprung up before the Convention of the 12th, of November, 1884, it has been maintained:

"I. That the changes which the Rio Grande or Bravo del Norte has suffered and which have brought on as a consequence, the destruction of the Mexican bank of that river, were effected principally in the years 1864, 1868 and 1873."[c]

And finally the Mexican agent appears to leave no doubt that any substantive claim to the Chamizal tract upon the basis of an alleged avulsive change in the river is abandoned when, in the concluding paragraph of the Mexican case, he rests his case absolutely and unreservedly upon the fixed boundary theory, making no reference whatever to the theory of avulsion. The

[a] Mexican case, p. 11. [b] Ibid., p. 30. [c] Ibid., p. 50.

concluding paragraph of the Mexican case reads as follows: "In conclusion we respectfully submit: That, the dividing line between Mexico and the United States being fixed in an invariable manner, by Articles V of the Treaty of February the 2nd, 1848, and I of the Treaty of December the 30th, 1853, to Mexico corresponds the eminent dominion over the tract called 'El Chamizal,' because it is situated South of the dividing line which, in accordance with Map No. 29 of the Boundary Commission, was marked out in 1852 by Messrs. José Salazar Ilarregui and General W. H. Emory." [a]

Upon this state of the record it could be safely assumed, were this case to be tried in accordance with the rules of pleading obtaining in Anglo-American courts, that Mexico would be held to be precluded from setting up a claim based upon the theory of avulsion. But in view of the lack of any well-developed rules of pleading recognized as governing international arbitration, and in view of the liberal practice which has hitherto been ordinarily followed by international tribunals in such matters, it does not seem by any means certain that Mexico would not still be entitled to revert to the avulsive theory, if so advised. In view of these considerations and of the fact that the Mexican agent has deemed it advisable to reproduce the opinion submitted by Senor Corella, the Consulting Engineer of the Mexican Section of the International Boundary Commission, on the occasion of the first trial of the Chamizal case, it has been deemed proper to request Mr. Follett, the Consulting Engineer of the American Section, to submit an opinion covering the scientific aspects of the case, which is printed in the Appendix of the countercase.[b]

Having thus placed Mr. Follett's opinion in the record for the information of the Tribunal in case the question of erosion or avulsion is again to be mooted, the United States, as stated in the case,[c] rests as to the issue of avulsion or erosion upon the opinion of the United States Commissioner delivered at the former trial of the case, "unless and until, further evidence or argument on the question of avulsion or erosion, is adduced by Mexico," and the United States respectfully calls upon Mexico in case it has not clearly defined its position on this point in the counter case to do so in the printed argument, which, in accordance with the terms of the Convention, is to be handed to the court at its first session on May 15th by informing both this honorable tribunal

[a] Mexican case, p. 53. [b] U. S. Countercase, p. 218. [c] U. S. Case, p. 19.

and the United States categorically whether it does or does not now make substantive claim to the Chamizal tract on the ground that this tract was placed on the United States side of the river by an avulsive change in the Rio Grande.

UNDER WHAT TREATY WAS THE INTERNATIONAL BOUNDARY LINE ALONG THE RIO GRANDE SURVEYED AND ESTABLISHED ACCORDING TO THE MEXICAN CASE?

It would seem that the Mexican Case holds that the international boundary line along the Rio Grande was surveyed and established under both the treaties of 1848 and 1853 and that therefore all the provisions of Article 5 of the Treaty of 1848 and Article 1 of the Treaty of 1853 are applicable to the questions at issue before this Tribunal.

On the first page of the Mexican Case it is stated "the 'El Chamizal' territory, a description of which has just been given, was situated on the Mexican bank of the Rio Grande or Bravo del Norte, when the boundary line between the United States of Mexico and the United States of America *was marked and established*[a] by virtue of the treaties of February the 2nd, 1848, and December the 30th, 1853."[b] Again the Mexican case says that (the rules for) the "decision" of the "El Chamizal Case" * * * "may only be found in the precepts contained in the boundary treaties of Guadalupe Hidalgo, dated February the 2nd, 1848 and of La Mesilla of December the 30th, 1853, which established the boundary line between Mexico and the United States."[c] Again, upon page 41 the Mexican Case relies upon the provisions of the treaty of 1848 to the effect that "no change shall ever be made" in the boundary line thereby established and upon a similar provision in the treaty of 1853 to the effect that "the dividing line thus established shall in all time be faithfully respected by the two governments without any variation therein." And finally the Mexican Case states generally and categorically "that the treaties applicable to this case are: Those of February the 2nd, 1848 and December the 30th, 1853."[d]

In only one passage so far as noted does the Mexican Case use any language which might possibly be taken to indicate that all provisions of Article 5 of the Treaty of 1848 and Article 1 of the Treaty of 1853 do not apply to the boundary at the point in dispute. The passage referred to is to be found on page 35 of

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[a] Italics ours.
[b] Mexican Case, pp. 1 and 2.
[c] Ibid., pp. 30 and 31.
[d] Ibid., p. 50.

the Mexican Case where it is stated "And in order that it may not be believed that the opinion of the Commissioners who marked the dividing line as provided in the Treaty of 1848, was not as regards the stability and invariability of the said line, the same which shared the Commissioners who terminated it, as provided in the treaty of 1853, herein are inserted following," etc. Although the matter is not one of particular importance from the viewpoint of the United States, it is submitted that it is important from the Mexican viewpoint to ascertain whether or not the Mexican Case is right in its apparent assumption that all the provisions of Article 5 of the Treaty of 1848 and Article 1 of the Treaty of 1853 apply to the Chamizal case. It is believed that the text of the treaties themselves, without more, demonstrates the inaccuracy of this assumption.

The line along the Rio Grande as provided in the treaty of Guadalupe Hidalgo [a] and in the Gadsden treaty [b] is absolutely identical (except for the short stretch above El Paso, not material to this case).[c] So far, therefore, as the mere language which fixed the boundary at the point in dispute is concerned, the language being identical, both treaties may be said to apply, and, whether both or only the latter applies, the practical effect would seem to be the same. In so far as other provisions of the articles in question are concerned, however, and notably the provisions upon which special reliance is placed in the Mexican Case, the situation is entirely different. The Treaty of Guadalupe Hidalgo provided for the appointment of a Commission "to designate a Boundary line with due precision upon authoritative maps, and to establish upon the ground land marks which shall show the limits of both Republics," and "to run and mark the said Boundary in its whole course to the mouth of the Rio Bravo del Norte." [d] The Gadsden Treaty of 1853 provides for another commission "to survey and mark out upon the land the dividing line stipulated by this article, *where it shall not have already been surveyed and established by the Mixed Commission, according to the Treaty of Guadalupe.*" [e]

It seems clear, therefore, that the line at any particular point, as, for instance, the point now in dispute, was either surveyed and established under the Treaty of 1848 or under the Treaty of 1853.

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[a] Art. 5, Treaty of Guadalupe Hidalgo, 1848, U. S. Case Appendix, p. 21.
[b] Art. 1, Gadsden Treaty, 1853, U. S. Case Appendix, p. 51.
[c] See U. S. Case, p. 10.
[d] Art. 5, Treaty of Guadalupe Hidalgo, 1848, U. S. Case Appendix, p. 22.
[e] Art. 1, Gadsden Treaty, 1853, U. S. Case Appendix, p. 51. Italics ours.

It could not have been "surveyed and established" under both of them. True, it might have been surveyed under the Treaty of 1848 and established, i. e., the work of the surveyors might have been formally agreed upon and accepted by the commissioners under the Treaty of 1853, but in that case, of course, it would have been in a legal sense "surveyed and established under the Treaty of 1853."[a]

In view of these provisions, therefore, and in view of the bearing which they are believed to have upon the position taken by the Mexican Case, the United States, with a view to clearly defining the issues which are to be argued at the trial, respectfully suggests that the Mexican Agent inform this Honorable Court and the United States whether Mexico proposes, as certain passages above quoted in the Mexican Case seem to indicate, to maintain at the trial that the international boundary line along the Rio Grande was surveyed and established under both the treaties of 1848 and 1853 and if Mexico does not intend to maintain this position, but on the other hand accepts the contention of the United States that such survey and establishment must have taken place either under the treaty of 1848 or under the treaty of 1853, it is respectfully suggested that Mexico inform this Honorable Tribunal and the United States under which of these two treaties Mexico deems the international boundary line along the Rio Grande to have been surveyed and established.

THE CONSTRUCTION WHICH THE MEXICAN GOVERNMENT HAS PLACED UPON THE TREATY OF 1884.

It was pointed out in the case of the United States[b] that the Chamizal Case is not a case of first impression; that it was submitted by Señor Mariscal, the Mexican Minister of Foreign Affairs, to the International Boundary Commission under Articles 1 and 4 of the convention of March, 1889;[b] that Article 4 of the convention of 1889 specifically incorporates by reference articles 1 and 2 of the convention of November 12, 1884; that accordingly Señor Mariscal submitted the question of an alleged avulsion in 1873 to the International Boundary Commission for decision in accordance with the convention of 1884, thus in the most solemn manner construing the treaty of 1884 as applicable to changes in

[a] See supra, p. 9. See also opinion of Attorney General Cushing, of Oct. 29, 1855. U. S. Countercase, p. 203.

[b] U. S. Case, p. 14.

the course of the Rio Grande taking place prior to the signature or ratification of that treaty.[a]

It was also pointed out that the case so submitted was tried exclusively upon the issue tendered by Señor Mariscal, namely, avulsion or erosion,[b] and that in the subsequent negotiations of 1897–98, looking toward a settlement of the Chamizal Case, Señor Mariscal did not give the slightest indication that he had changed his mind as to the issues involved.[c]

The Case of the United States furthermore pointed out that the explanation offered by the Mexican Embassy in the Mexican note of January 15, 1910, of the proceedings at the prior trial of the Chamizal Case, namely that the opinion of the Mexican Commissioner in 1895 "is nothing but the expression of the views of a high official of our government without its official sanction;"[d] took no account of the action of the Mexican Foreign Office in sending the case to trial upon the issue of avulsion or erosion under the treaties of 1884 and 1889.[e]

The Mexican Case shows a greater appreciation of the real significance of the proceedings of 1894–1896, as may be seen in the following language, in which it is sought to escape from the interpretation placed upon the treaty of 1884 by the two Governments in the earlier proceedings:

"In vain could it be alleged that by reason of the petition of Pedro I. Garcia, former owner of the El Chamizal property, the two Governments submitted the decision of the case to the Mixed Boundary Commission, which was organized by virtue of provision contained in the Convention dated March the 1st, 1889, which was promulgated in Mexico on the 3rd of January 1891; because after being fully discussed, the commissioners of the two countries could not come to an agreement, and the question remained outside of their jurisdiction and has continued to be discussed through diplomatic channels between the two State departments."[f]

This language however seems to justify the repetition of some observations which have already been made. In the first place it should not be forgotten that the "petition of Pedro I. Garcia" in which he alleged the transfer of the Chamizal tract to the Mexican bank of the Rio Grande in the year 1873 was forwarded to the Inter-

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[a] U. S. case, p. 14.
[b] Ibid., pp. 15–19.
[c] Ibid., pp. 19–23.
[d] Señor De la Barra to Mr. Knox, Jan. 15, 1910, U. S. Case Appendix, p. 405 at 409.
[e] U. S. Case, p. 40. See also Ibid., pp. 14–24.
[f] Mexican Case, pp. 17 and 18.

national Boundary Commission by Señor Ignacio Mariscal Mexican Minister of foreign Affairs for the decision under the conventions of 1889. It is not merely with the "petition of Pedro I. Garcia" but with the action of Señor Mariscal upon that petition that we are concerned.

Second. Señor Mariscal not only submitted Garcia's claim—the Chamizal Case—to the "Mixed Boundary Commission which was organized by virtue of provision contained in the convention dated March 1st, 1889," but he submitted it specifically under articles 1 and 4 of the convention of 1889 and article 4 specifically incorporates by reference articles 1 and 2 of the convention of 1884.[a]

Third. It is respectfully submitted as stated in the Case of the United States "that with the failure of the Commissioners to agree, the Chamizal Case reverted for diplomatic settlement in accordance with Article 8 of the Convention of March 1, 1889."[b]

In the sense, therefore, that it was no longer before the Commission it was "outside their jurisdiction" in very much the same sense in which a case which has been discontinued after a

[a] See in this connection the following statement from the Mexican Case: "The Joint Boundary Commission created by the convention of the 1st of March 1889, had for its sole object, as the convention itself expressed it, to facilitate the carrying out of the principles contained in the convention of the 12th of November, 1884, and to avoid the difficulties occasioned through the changes which take place in the courses of the rivers Grande or Bravo del Norte and Colorado." (Mexican Case, p. 18.) This language substantially follows the preamble of the convention of 1889, except that the latter does not use the words "sole object." No opinion is expressed, it being unnecessary to the present purpose as to whether or not the inference that the objects stated in the preamble were the "sole objects" is correct or not. It is enough to point out that if the Mexican interpretation is correct the position of the United States is even stronger than that stated in the text and the very act of Señor Mariscal in referring the case to the International Boundary Commission without more, shows that he considered the treaty of 1884 applicable thereto.

[b] U. S. Case, p. 19, citing U. S. Case Appendix, p. 75. Article 8 of the Convention of 1889 provides that in case the Commissioners fail to agree "both Governments shall take cognizance of the matter and shall decide it amicably, bearing constantly in mind the stipulation of Article 21 of the treaty of Guadalupe Hidalgo of February 2, 1848." The latter article it will be remembered binds the two Governments to "endeavor in the most sincere and earnest manner to settle the difficulties so arising * * * " and not to resort to force or reprisals "until the government of that which deems itself aggrieved shall have maturely considered in the spirit of peace and good neighborship whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side or by that of a friendly nation." It seems clear therefore that if express power be needed, for the two Governments, acting by common accord and without a new convention to send the case in regard to which the Commissioners have failed to agree back for a second trial, it is to be found in these treaty provisions.

disagreement of the jury is outside the jurisdiction of an ordinary municipal court, but this has no tendency to show that the case had not been properly assigned for trial in the first instance, which it is submitted, is the only question which is relevant to the present discussion.

Fourth. It is interesting to note in passing, that although the Mexican note of January 15, 1910, refers to the opinion of the Mexican Commissioner in the Chamizal Case as "nothing but the expression of the views of a high official of our government without its official sanction," and characterizes these views as "wholly unimportant" and "stripped of any international significance" and the Mexican Case dismisses the first trial of the Chamizal Case without even mentioning the views of the Mexican Commissioner "because after being fully discussed the Commissioners of the two governments could not come to an agreement,"[a] the Mexican Case appears to regard the views of the American Commissioner as both significant and important. For instance, after quoting the Joint Journal of November 6, 1895, to show General Mills' statement as to the location of the boundary line in 1852 and its change to its present location, the Mexican Agent remarks, with reference to General Mills' statement "the foregoing declaration is so conclusive and precise that it could relieve the government of the United States of Mexico from any other demonstration to establish that the action of the Rio Grande or Bravo del Norte had the effect of passing over a portion of the lands of El Chamizal from one side to the other etc., etc."[b]

It is respectfully submitted that while it is, of course, true that a difference of opinion with respect to the question of avulsion or erosion a question of fact, prevented a decision in the Chamizal Case, the Mexican Minister of Foreign Affairs, both by his own positive action in submitting the case under the treaties of 1889 and 1884, which needed no approval because he was the officer through whom the definitive and official attitude of his government upon international matters is made known, and by his tacit approval of the course of the Mexican Commissioner during the period of almost two years which the case was before the court, showed

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[a] See supra, p. 12.

[b] Mexican Case, p. 4. See also Mexican Case, pp. 2 and 3 and 18 for further reliance upon statements by General Mills. See also page 11 where the Mexican Agent finds it necessary to dispute the accuracy of a statement inserted in the record by General Mills a statement by the way which the Mexican Commissioner admitted "simply as a matter of fact." See U. S. Case Appendix, 184–185.

that at that time the Mexican Government held the same view of the law of this case as was then and is now held by the United States. However, as there is always greater weight attached to opinions which are carried into action than those which, however solemnly expressed, fail of being recorded in acts, and inasmuch as the Mexican note of January 15, 1910, and the Mexican Case, has laid such stress upon the fact that the Commissioners in the Chamizal Case failed to agree, it may perhaps be permissible to anticipate the argument to the extent of citing a case which was before the Commission at the same time as the Chamizal Case and which was decided August 10, 1896, the decision being approved by the Government of the United States September 29, 1896,[a] and by the Government of Mexico October 5, 1896.[b] Reference is to the case known as "La Isla de San Elizario." This case was presented to the International Boundary Commission by the Mexican Commissioner on November 4, 1895.[c] The Joint Journal of December 6, 1895, contains the following passages:[d]

* * * "The Joint Commission, from their personal observation, being unable to form any definite judgment of the matter in question, now request the Engineers of the Commission to proceed to the locality and make a detailed survey of the alleged old river, adopted as the international boundary by the Joint Commission of Emory and Salazar in 1855, and establish as near as practicable, its bed at the date when it ceased to carry a majority of the water of the Rio Bravo; and also to establish the present river bed from the point where it separates from the old bed above to that where it joins the old bed below.

* * * * * * *

"As a matter of economy in case the old river bed should be decided to be the international boundary, where, in such event, it would be necessary to establish numerous monuments to identify it in the future, it is desired that the Engineers in surveying it should establish by stakes and suitable witness trees all the points suitable and necessary for the placing of these monuments to mark the line, thus to avoid the necessity of any future engineering work to establish these points should it become necessary to use them; it being clearly understood that in case the present river should be decided to be the boundary that these stakes and witness trees are void and of no effect."

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[a] Proceedings International Boundary Commission, Vol. I., p. 105.

[b] Ibid., p. 105. See also Señor Romero to Mr. Olney, Oct. 16, 1896, U. S. Case Appendix, p. 931–932. Also, Proceedings International Boundary Commission, Vol. I., pp. 101–107.

[c] Ibid., pp. 43 and 101.

[d] Ibid., Vol. I, p. 102.

At the session of the Joint Commission of August 10, 1896, testimony was introduced tending to show that at the time of the Emory-Salazar survey the river ran to the South and West of the tract called the Island of San Elizario and that in 1857 or 1858 an avulsive change took place whereby the river suddenly abandoned its bed and ran to the North and East of the Island.[a]

The Joint Report of the Engineers directed by the Commission at the meeting of December 6th[b] was then presented. In this report the Engineers say:[c]

"The bed of the river as it was at the time the change took place is shown on the map by broken lines; the river at the time of the survey of Major Emory, taken from sheet No. 28, in full blue lines; the river from Mr. Salazar's, sheet No. 28 in full green lines, and the discrepancy between the location of the river from Major Emory's sheet No. 28 and Mr. Salazar's sheet No. 28 is accounted for by the fact that the surveys were not made at the same time, the changes made by the river in one summer intervening.

"The discrepancy between the old abandoned bed of the river as found on the ground and the location of the river as taken from the Emory and Salazar maps is accounted for by the fact that the change of the river to its present channel was made about 1857, as near as can be ascertained, some four years after the different surveys of Emory and Salazar, during which time the river is supposed to have made many changes towards both the right and left banks as shown by the map submitted."

The Commission thereupon rendered the following decision:

"From the foregoing testimony and personal observation of the Commissioners and the report and maps of the Consulting Engineers, the Commission finds that in the year 1852, when the international boundary was established, the river ran near to where the present dry bed is marked on said maps above referred to, and continued to run in that locality with slight changes until about the year 1857 or 1858, when, from natural causes and by the action of the current, it abandoned its old channel (the present old bed as marked on the maps) and opened up a new one in the direction and vicinity of the present river as marked on said before-mentioned maps.

"The Commission, therefore, in accordance with Article IV of the Convention of March 1, 1889, announces as its decision that the change has occurred through avulsion and that, therefore, in accordance with Article II of the Convention of November 12,

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[a] Proceedings International Boundary Commission, Vol. I, pp. 103 and 104.

[b] See supra, p. 15.

[c] Report of the Consulting Engineers, Messrs. Dabney and Corella, dated July 10, 1896, Proceedings International Boundary Commission, Vol. I, p. 104 at 105.

1884, the true boundary remains in the original channel bed of the river as marked on said maps.

"The Engineers have marked on said maps twenty-one points in said old river bed suitable for monuments to identify said international boundary, numbering these points one to twenty-one, inclusive; No. 1 being, as near as could be determined, at the upper end of said old bed, and No. 21 being at its lower end.

"In order to prevent delay in the marking of this boundary it is hereby mutually agreed by two Commissioners that, as soon as practicable after this decision shall have been approved by their respective Governments, each Government shall erect, at its own expense, each alternate monument along said old river bed, at the points marked on said maps, the United States Government beginning with No. 1, as marked on the maps, and erecting the odd-numbered ones, and the Mexican Government erecting the even-numbered ones. These monuments to be similar to those used in marking our international boundary west of the Rio Grande." [a]

This decision, as above noted,[b] was approved by both Governments. Minister Mariscal's despatch to the Mexican Commissioner of October 5, 1896, announcing the approval of the Mexican Government reads as follows:[c]

"MEXICO, *October 5, 1896.*

"I am today stating the following to the Mexican Minister at Washington:

"'I enclose to you a copy of the minutes of the International Boundary Commission of August 10 of this year, as well as a copy of the report of the Special Boundary Bureau of this Department, both documents relating to the decision of the case of the Island of San Elizario, in order that you may inform the United States Government that the said decision has been approved by the Mexican Government and that, in accordance with the aforementioned minutes, monuments are to be constructed at the expense of both governments in the old channel of the Rio Grande.'

"All of which I transmit to you for your information, and renew to you the assurances of my consideration.

"MARISCAL.

"Mr. FRANCISCO J. OSORNO,
"*Ciudad Juarez.*"

On October 1, 1896, Señor Romero formally advised the Secretary of State "that the Government of Mexico approved the decision given on the 10th of August last by the International (Water) Boundary Commission, in the case of the Island of San

[a] Proceedings International Boundary Commission, Vol. I, p. 104.

[b] See supra, p. 15.

[c] See Proceedings International Boundary Commission, Vol. I, p. 105, for Spanish text of this letter.

Elizario; according to which—if approved likewise by the Government of the United States—monuments shall be erected at the cost of both Governments to mark the former channel of the River Rio del Norte at that place." [a]

It will be observed therefore, that this case was decided on the ground of an avulsive change in 1858 and that the fixed boundary theory was ignored and apparently unknown. Furthermore, the Commissioners acting upon the Joint Report of the Engineers in the San Elizario Case found that the Emory and Salazar channels to the South and West of the island of San Elizario differed slightly from one another, and that both differed from the channel of 1857–58, the date when the "old river bed" "ceased to carry a majority of the water of the Rio Bravo", and that the Commission, having found an avulsive change located the boundary line in the "original channel bed of the river as marked on said maps"; that is to say, the channel of 1857–58. This becomes perfectly clear on examining the official, signed maps accompanying the San Elizario case. Take for instance, the map on page 109 of the Proceedings of the International Boundary Commission. There we find a green channel marked "Salazar River 1852", a blue channel marked "Emory River 1852" and a black channel marked "Old River Channel Abandoned in 1858". These channels all lie within a very narrow compass and yet they have substantially nothing in common except their points of intersection. It is in the "old River Channel Abandoned in 1858" that the Commission relocated the international boundary line. It is unnecessary to point out that the principle upon which the Commission acted in this case when it applied the convention of 1884 to a change which took place in 1858, with the approval of both Governments, so long as it stands as the law and unless and until it should be overruled by this Honorable Court, is absolutely conclusive against the present Mexican contention of an invariable and fixed line in the channel of 1852. Moreover, if the Mexican contention that the boundary line remains where it was fixed in 1852 is correct, the line must, of course, in any event have been relocated either along the "Emory River" or the "Salazar River" and although the difference between these lines and the line of 1857 is negligible as a practical matter, it also is conclusive in principle against the Mexican contention.

Before leaving this point it may not be improper to raise the question in passing as to where the boundary line should have been

[a] Señor Romero to Mr. Olney, Oct. 16, 1896, U. S. Case Appendix, p. 931 at 932.

fixed in this case and in other cases where the Emory and Salazar surveys differ, if the present Mexican contention had been adopted. Should it have followed the "Emory River" or the "Salazar River"? That the Commissioners were well aware of the differences between their maps is shown not only by the legends upon the maps themselves,[a] but by the Journal of September 21, 1857, in which Commissioners Emory and Salazar declared:[b]

"The Commissioners think it proper to state that in many details along the Rio Bravo, in Topography, and in Latitude and Longitude, there are small differences, the legitimate result of scientific operations performed under difficult circumstances. These differences are explained by notes on the Maps, but they in no way affect the Boundary Line."

Is it reasonable to suppose that Commissioners Emory and Salazar would have thought this slight but well known difference in their maps of the river could "in no way affect the boundary line" if the boundary line were fixed and invariable?

The United States has contended that the present Mexican contention with respect to the Treaty of 1884 is entirely inconsistent with the construction which the two governments have placed upon that convention in the Chamizal Case, as well as in other matters. The Mexican Case in reply makes the point that no decision was reached in the Chamizal Case. The United States rejoins first that it was not necessary to reach a decision in order for the Mexican Government to commit itself to the proposition that the Treaty of 1884 applied to the case, and secondly, that in the case of the neighboring Island of San Elizario the Mexican Commissioner acted upon the theory which the Mexican Minister of Foreign Affairs had propounded in the Chamizal Case and that in that case a decision was reached and approved by the Mexican Government. The San Elizario case is typical and illustrative of the attitude of both Governments towards the convention of 1884 and of the construction which they have repeatedly placed upon it. It has been cited and discussed at this point in some detail merely because it happens to meet the particular argument in the Mexican Case here under consideration. To further enumerate and discuss the various acts and declarations whereby the two Governments have construed the Treaty of 1884 would trespass too much upon the function of argument.

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[a] See U. S. Case, Portfolio Map No. 6.

[b] Joint Journal Commissioners Emory and Salazar, September 21, 1857, U. S. Countercase, p. 62.

The United States respectfully adheres to the following statement of its position on this point as laid down in the Case of the United States:

"It is respectfully submitted and the United States will at the appropriate time endeavor to demonstrate that the two governments, since the treaty of 1884, both by their declarations and by their actions, ranging from ordinary acts and declaration of executive administration to the most solemn and formal national acts and declarations, have interpreted the treaty of 1884 as applying to all changes in the course of the Rio Grande since the river became the international boundary."[a]

THE CONVENTION OF JUNE 24, 1910.

Some stress is placed in the Mexican Case upon the phraseology of the preamble of the Convention of June 24, 1910, which states that the two countries desire to have the Chamizal case decided "in accordance with the various treaties and conventions now existing between the two countries and in accordance with the principles of international law."[b] Says the Mexican Case:[c]

"inasmuch as the said El Chamizal case has had to be submitted to arbitration by virtue of a new convention in which it has been consigned that the governments of the United States of Mexico and of the United States of America are desirous of putting an end to the differences which have risen between them regarding the eminent dominion over the El Chamizal tract, not as provided by the convention of 1884, but with submission to the various treaties and conventions in force between the two countries and according to the principles of international law, as is expressed in the preamble of the Arbitration Convention."

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"If the governments of the United States of Mexico and of the United States of America, had the intention that the "El Chamizal" dispute should be resolved solely in accordance with the principles established in the Convention of the 12th of November, 1884, they would have thus declared it without more ado and they would have consigned it in a clear, precise and indubitable manner; but as that intention was radically different, they have declared in the preamble of the said Arbitration Convention, that the case shall have to be resolved according to the judgment which the arbitrators may form of it, in accordance with, and with submission to the precepts of the various treaties and conventions in force

[a] U. S. Case, pp. 40 and 41.

[b] U. S. Case Appendix, p. 3; see also Mexican Case, pp. 18 and 19.

[c] Mexican Case, pp. 18 and 19.

between the two countries, and according to the principles of International Law."

By reference to the diplomatic correspondence leading up to the convention of June 24, 1910, it will be observed that the language of the preamble of the treaty as finally adopted follows precisely the original draft enclosed by Mr. Knox in his note to Señor de la Barra of June 17, 1910.[a] The language upon which the Mexican case places reliance therefore was originally suggested by the United States and it was suggested by the United States after the Mexican note of January 15, 1910,[b] had made it absolutely clear that the principal, if not the only contention upon which Mexico now rests is the fixed boundary theory, and had developed the two essential propositions upon which this theory is based, namely, first, that the treaties of 1848 and 1853 established a fixed boundary,[c] second, that the Treaty of 1884 is not applicable to the Rio Grande except at points where the river in 1884 occupied the same position which it occupied in 1852–53, i. e. the Treaty of 1884 is not applicable to changes in the river taking place prior to 1884.[d]

Under these circumstances would it have been reasonable for the United States if it, in good faith desired the settlement of this case through arbitration, to propose a convention whereby the case was to be tried under the convention of 1884, thereby depriving Mexico, by the very terms of the submission, or any right to set up one of the two propositions absolutely fundamental and essential to the maintenance of the position which she had avowedly assumed? And if the United States had, by any inadvertence, proposed such a stipulation, is it reasonable to suppose that the Mexican Foreign Office would have accepted it? It is undoubtedly true, as the Mexican Case says, that it would have been possible to draw a convention providing for a decision of this case under the convention of 1884, thereby precluding Mexico from raising the fixed boundary issue, but it is submitted that it is hardly fair to argue that because the question of the fixed boundary was not settled against Mexico in advance, but was submitted to this honorable tribunal for decision in accordance with the treaty stipulations obtaining between the two countries and the prin-

[a] Mr. Knox to Señor de la Barra, June 17th, 1910, U. S. Case Appendix, p. 434 at 435.
[b] U. S. Case Appendix, p. 405.
[c] Señor de la Barra to Mr. Knox, Jan. 15, 1910, U. S. Case Appendix, p. 405 at p. 407. See also U. S. Case, p. 33.
[d] U. S. Case Appendix, p. 405 at p. 406. See also U. S. Case, p. 37.

ciples of international law, that this is a ground for deciding this proposition in her favor upon the arbitration. In other words, it is respectfully submitted that the fact that the United States has agreed to arbitrate this case is not an argument for a decision against the United States.

The Mexican Case seeks to fortify the argument which has just been considered by reference to the provisions of Article 9 of the Convention of June 24, 1910.

The Mexican Case observes, "This opinion" (namely, the argument which has just been discussed which the Mexican Case founds upon the terms of the Preamble of the Convention of June 24, 1910) "is made all the more manifest by the wishes expressed by both Governments to consider the El Chamizal Case, on submitting it to arbitration by virtue of the Convention of June 24th, 1910, as if it were a case regarding which no solutions had been sought to the claims presented since the remote time when it originated, because in Art. IX of the said Arbitration Convention, with the end of removing difficulties and rendering solely applicable to the case the treaties and conventions in force, the former propositions which have reciprocally been made towards the final settlement of the El Chamizal Case, are declared null and void and of no value whatsoever." [a]

It is submitted that an examination of the provision of Article 9 here referred to in the light of the origin of the provision in question, shows that this provision had no reference to the first trial of the Chamizal Case or to the question as to whether or not the provisions of the treaty of 1884 are properly applicable to the case either on its first trial or at present. The provision of Article 9 upon which the Mexican Case relies, made its first appearance in the counterdraft submitted informally by the Mexican Ambassador to the Department of State. As at first proposed by the Ambassador, Article 9 reads as follows: [b]

"By virtue of the present Convention both contracting parties declare to be null and without any value the previous propositions that have reciprocally been made for the same purpose."

In the informal oral discussions which took place the representatives of the United States objected to this provision as ambiguous and the representatives of Mexico explained orally that the purpose of the provision was formally to withdraw and declare null and void the propositions which had been made by

[a] Mexican Case, p. 19.

[b] See Mexican counterdraft, Art. 9, U. S. Countercase Appendix, p. 35 at p. 41.

the Mexican Government through diplomatic channels for the settlement of the Chamizal Case.

It will be remembered that these propositions, contained in Señor Godoy's notes to Mr. Root of May 21, 1908,[a] and December 12, 1908,[b] involved the acceptance by the United States of the fixed boundary theory and, as stated in the Department's response of July 28, 1909,[c] "starting from this premise * * * the readjustment of the boundary line through a mutual exchange of El Chamizal and Bosque de Cordoba for the Isla San Elizario and the artificial bar of El Horcon." The United States naturally had no objection to assenting to the withdrawal of these propositions or to a formal declaration that they were to be considered null and void, provided this declaration were properly safeguarded, and accordingly the provision in question was modified so as to relate solely to the propositions for the *diplomatic settlement* of the Chamizal Case and an additional provision was added, out of greater caution, to make perfectly clear the right of both Governments to introduce in evidence, for the information of the court, the entire diplomatic correspondence relating to the case. The Article as thus modified and finally adopted reads as follows:[d]

"By this Convention the Contracting Parties declare to be null and void all previous propositions that have reciprocally been made for the diplomatic settlement of the Chamizal Case; but each party shall be entitled to put in evidence by way of information such of this official correspondence as it deems advisable."

It is respectfully submitted that neither the text of this Article nor the circumstances surrounding its acceptance and inclusion in the treaty of June 24, 1910, lend themselves to the suggestion put forward in the Mexican Case.

MEXICO'S CLAIMS TO THE CHAMIZAL TRACT AND THE EXERCISE OF JURISDICTION BY THE UNITED STATES.

The Mexican Case joins issues squarely with a statement entered by the American Commissioner, General Mills, in the Joint Journal of the International Boundary Commission of July 10, 1896, during the first trial of the Chamizal Case. The Mexican Case says:[e]

"The history of the claim formulated by the government urging its rights, in accordance with the boundary treaties, unquestion-

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[a] U. S. Case Appendix, p. 377 at p. 379.
[b] U. S. Case Appendix, p. 389.
[c] U. S. Case Appendix, p. 396.
[d] Art. 9 Chamizal Treaty, U. S. Case Appendix, p. 6.
[e] Mexican Case, p. 11.

ably evidences the error incurred by the American Boundary Commissioner, Mr. Anson Mills, when at the meeting held in Ciudad Juárez by the Joint Boundary Commission on the 10th of July, 1896, he declared 'that for forty-two years, namely from 1852 when the boundary was established by Emory and Salazar, until January 23rd, 1894, when the petitioner in this case, Pedro I. García, filed his petition, no claim was ever officially made or asserted to the land in dispute, either by Mexican authorities or by any Mexican citizen, but that the United States held indisputed authority over the land on the left bank of the river to its deepest channel opposite Juárez and continuously during its southward movement.'"

It will be noted that the statement with which the Mexican Case now joins issue was one of three propositions set up by the United States Commissioner as "facts of such public notoriety that he has not considered it necessary to adduce proof of them "[a] and that "the Mexican Commissioner replied that he admitted simply as a matter of fact the three points to which the United States Commissioner refers."[b]

It will furthermore be observed by reference to the Joint Journal of July 10, 1896, that the statement of the American Commissioner with which the Mexican Case disagrees covered two points; first, the absence of any official claim to the land in dispute on the part of the Mexican Government during 42 years; and second, the undisputed jurisdiction of the United States over the land in question during the same period. Taking up these two propositions in their order we find that the Mexican Case makes the following statement with respect to the claims which Mexico has presented to the United States with reference to the Chamizal Tract.

"That the changes which produced the above results were not effected successively and annually from the years 1852 to 1873, but at fixed times, when great swells came on as those which took place principally in 1864, 1868, and 1873.

***[c]

The Government of the United States of Mexico, each time that sudden changes in the course of the Rio Grande or Bravo del Norte took place, modifying the boundary line, addressed itself to the Government of the United States, bringing up the boundary ques-

[a] Joint Journal, July 10, 1896, U. S. Case Appendix, pp. 183 at 184.

[b] Ibid., p. 185.

[c] It will be noted that these stars occur in the Mexican Case and that the second paragraph quoted immediately follows the first one.

tion and calling attention to the necessity of taking into account the said changes and the influence which they might have with regard to the boundary line of both countries."[a]

Again in his statement of conclusions the learned Mexican Agent says:

"That the Mexican Government presented, by reason of the aforementioned changes suffered by the Rio Grande or Bravo del Norte, divers claims and principally those which were formulated in the Note of the Secretary of Foreign Affairs, Don Sebastián Lerdo de Tejada, on the 5th of December, 1866, and those presented by the Secretary of Foreign Affairs, Don José M. Lafragua, in his Note dated September the 12th, 1874."[b]

It will be noted that in the first of these passages the Mexican Case states that the change in the course of the river was effected by great swells and "principally in 1864, 1868 and 1873" and further that it credits the Mexican Government with having made representations to the Government of the United States "each time that sudden changes in the course of the Rio Grande or Bravo del Norte took place." Prima facie this would seem to indicate a claim that the Mexican Government had made representations in 1864, 1868 and 1873, or immediately thereafter.

In the second passage the Mexican Case speaks of "divers claims and principally those which were formulated in a note of the Secretary of Foreign Affairs Don Sebastián Lerdo de Tejada on the 5th of December 1866, and those presented by the Secretary of Foreign Affairs Don José M. Lafragua in his note dated September 12, 1874."

It would seem therefore that the representations really relied upon by the Mexican Case narrow down to those just specified.

Taking these in their order it appears that the instructions of Señor Tejada of the 5th of December 1866 only became effective as far as the United States is concerned by the note of Señor Romero of January 9th, 1867, a note not printed in the Appendix to the Mexican Case, but which is reproduced in the Appendix to the Case of the United States,[c] and that these representations were modified or nullified so far as the United States is concerned by Mr. Romero's note of February 6, 1867, which also does not appear in the Mexican Case but which is reproduced in the Appendix to the Case of the United States,[d] a note which it is

[a] Mexican Case, p. 11.

[b] Mexican Case, pp. 50 and 51.

[c] Señor Romero to Mr. Seward, Jan. 9, 1867, U. S. Case Appendix, p. 555.

[d] Señor Romero to Mr. Seward, February 6, 1867, U. S. Case Appendix, p. 565.

submitted, taken in connection with the subsequent silence of the Mexican Government amounts to a withdrawal of Señor Romero's representations of January 9, 1867.

As to the second representation relied on by the Mexican Case, namely the claims "presented by the Secretary of Foreign Affairs, Don José M. Lafragua in his note dated September 12, 1874," it should be observed that this note was merely an instruction of the Secretary of Foreign Affairs to the Mexican Minister at Washington, which can only acquire significance as regards the United States through communication either textually or in substance to the Department of State through the accredited Mexican representative at Washington. It is stated on page 12 of the Mexican Case that "the second claim (i. e. the claim presented in Señor Lefragua's note of September 12, 1874) was presented by the Mexican Legation in Washington, to the Department of State on the 17th of November, 1874." [a] In the Spanish text of the Mexican Case this date is given as December 17, 1874.[a] A most careful and conscientious search of the pertinent records and files of the Department of State covering the calendar years 1874 and 1875 has failed to show any communication from the Mexican Legation upon the matter in question on either the 17th of November or the 17th of December, 1874, or any record of or any acknowledgment of or any reference to such communication.[b]

So far as has been noted the only other passage in the Mexican case which might be thought to afford a clue whereby some record of or reference to the representation stated to have been made by the Mexican Legation in 1874 might be found in the archives of Department of State is the following:

"The result of the claim presented by the Government of the United States of Mexico to that of the United States of America, in 1874, was the proposition which the Mexican Legation in Washington made to the State Department on the 25th of March, 1875, when handing Assistant Secretary Cadwalader, a rough memorandum of agreement to decide the disputes which might arise through the changes effected in the rivers Grande or Bravo del Norte and Colorado." [c]

An account of the circumstances connected with the presentation of the 1875 draft is found in Señor Romero's note to Mr. Frelinghuysen of May 31, 1884, where Mr. Romero says,

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[a] Mexican Case, p. 12.

[b] See affidavits of the Chief and Assistant Chief of the Bureau of Indexes and Archives of the Department of State. U. S. Countercase, pp. 216–218.

[c] Mexican Case, p. 16.

"I have the honor to state to you that I find from the archives of this legation that on the 25th of March, 1875, Mr. Mariscal, then Minister of Mexico in Washington, presented to Mr. Cadwalader, Assistant Secretary of State of the United States of America, Mr. Fish, the Secretary, being absent that day, a draft of a convention for the settlement of such difficulties. Later, on the 2d December, of the same year, Mr. Mariscal delivered to Mr. Fish another draft relating to the same object." [a]

Señor Romero enclosed with this note a copy of the draft of the second of December 1875, which is substantially identical with the draft of March 25, 1875. With respect to the draft convention of 1875 the records of the Department of State show the following:

First. The records for March 25 and December 2, 1875 show two substantially identical drafts of a convention with respect to the boundary line along the Gila and Rio Grande and the records show nothing more. The text of this draft is printed in the Appendix to the Case of the United States.[b] Mr. Fish referred to this draft convention in a note to Señor Mariscal of July 20, 1876 which reads as follows:

"You will recollect that on the 2d of December, last, you left with me a draft of a Convention on the subject of the boundary, the main purpose of which was to provide for the changes in the course of the Rio Bravo since the line was determined under the Guadelupe Hidalgo treaty of 1848. After the lapse of some time I furnished you with a counter draft of a Convention on the same subject which, if I am not mistaken, you said you would refer for the consideration of your government. The purpose of this communication is to inquire if you have since received any instructions in regard to the matter. Recent events seem to make it specially desirable that it should at once be definitely adjusted." [c]

Señor Mariscal's recollection of what took place in connection with the drafts was somewhat different from that of Mr. Fish, and he responded under date of July 22, 1876 as follows:

"Permit me to remind you of what really took place, and which your numerous and important transactions have for the moment made you forgetful. I, having presented to you on the said date the scheme in question, you did not give me your opinion upon it, as you have informed me upon more than one occasion; from want of time to examine it with the necessary attention. But at the close of one of the interviews that upon other affairs, I had the honor to have with you in the month of March, you gave me to

[a] Señor Romero to Mr. Frelinghuysen, May 31, 1884, U. S. Case Appendix, p. 589 at 590.

[b] Enclosure in Señor Romero's note to Mr. Frelinghuysen of May 3, 1884, U. S. Case Appendix, pp. 590 and 591.

[c] Mr. Fish to Señor Mariscal, July 20, 1876, U. S. Case Appendix, p. 578.

understand, that you had reflected upon the business and for the difficulties my plan endeavoured to obviate; had found another solution more adequate. You then explained it to me, and I replied that my plan contained the ideas of the Mexican Government upon special matters, but that instructions were wanting for treating upon others entirely different, but that if you would put in writing your views, I would give an account to my Government, in order that it might instruct me specially.

"You have not communicated to me your plan in writing, and for that reason I have not made the report that in such case I offered to make concerning the affair."[a]

This is all that has been found in the records of the Department of State with respect to the draft conventions presented by the Mexican Legation in 1875 and the circumstances leading to their presentation, and it will be observed that these records are silent with respect to any claim presented by the Mexican Legation in November or December, 1874.

Possibly the records in the Mexican archives may throw additional light upon this claim and further discussion of this topic may, therefore, properly be postponed until the argument when the documents appended to the Mexican countercase will be accessible to both parties.

Under these circumstances the United States is not at this time in a position to discuss the weight which should be given to the claim said to have been presented by the Mexican Legation in Washington to the Department of State on the 17th of November or December, 1874.

Having thus briefly outlined the evidence so far disclosed by the record with respect to the Mexican claims to the Chamizal Tract relied on in the Mexican Case it is necessary to consider the second proposition laid down by the American Commissioner in his opinion at the former trial of the Chamizal Case with which the Mexican Case has also joined issue. This proposition was "that the United States held undisputed authority over the land on the left bank of the river to its deepest channel opposite Juarez continuously during its southward movement."[b]

On this point the Mexican Case says,

"It is true that the American authorities in El Paso, Texas, tried to consider as their territory, the tract of El Chamizal; but it is none the less true that from 1864 up to 1887, the jurisdiction

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[a] Señor Mariscal to Mr. Fish, July 22, 1876, U. S. Case Appendix, pp. 579 and 580.

[b] See supra p. 24. See Joint Journal July 10, 1896, U. S. Case Appendix, p. 183 at 184.

exercised by them was rather de facto and due to the circumstance that the mentioned tract was then situated on the left margin of the Rio Grande or Bravo del Norte, because up to the 4th of May, 1887, and except for the rights of third parties suffering damage previous to the 11th of February, 1858, on which date the State of Texas ratified the original Concession of Ponce de León, granted in 1821, the Campbell Real Estate Company, established in Texas, solicited and obtained from the said State, on behalf of Ponce de León, and as additional confirmation, a concession by which the State of Texas ceded to Juan María Ponce de León, his heirs and assigns, an extension of 3,597,005 square varas." [a]

The following is submitted as a fair summary of the statements and inferences of this passage:

First. It is inferred that the land in dispute did not begin to form on the United States side of the river (whether it formed by accretion or avulsion) until 1864.

Second. It is stated that from 1864 to 1887 the jurisdiction exercised by the American authorities was "rather de facto and due to the circumstance that the mentioned tract was then situated on the left margin of the Rio Grande or Bravo del Norte."

Third. It is inferentially admitted that from 1887 until 1894 the United States exercised jurisdiction as claimed.

The United States respectfully joins issue with the first inference (if such inference there be) and maintains that the southward movement of the river was in progress at the time of the Emory-Salazar survey and has continued to greater or less extent ever since except when controlled by artificial means, and that therefore, from 1852 to 1864, there was a constantly increasing margin of accreted land upon the United States side of the river.

The United States also joins issue with the second statement as to the informal character of the jurisdiction exercised by the United States authorities and maintains that during the entire period from 1852 to 1894 the United States exercised open, notorious, and formal jurisdiction of every description over the territory in dispute, i. e. "over the land on the left bank of the river to its deepest channel opposite Juarez continuously during its southward movement." [b]

The documentary evidence which in the opinion of the United States substantiates these contentions appears in the appendix to the Case and Countercase of the United States and will be marshalled on the argument.

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[a] Mexican Case, p. 11.

[b] See Gen. Mills' statement quoted supra, p. 24. See also Joint Journal July 10, 1896, U. S. Case Appendix, p. 183 at 184.

With respect to the evidence offered by the United States in the Appendix to the Countercase as regards the exercise of jurisdiction of every description by the United States over the Chamizal Tract and the absence of such exercise of jurisdiction on the part of Mexico, it is deemed advisable to make two observations. First. It will be noted that there are printed in the countercase of the United States several concessions granted by the Mexican Government for the construction of bridges across the Rio Grande between El Paso, Texas and Ciudad Juarez, Chihuahua.[a] A number of other similar concessions of an earlier date are referred to in the concessions so printed [b] and copies of these concessions have been obtained from the appropriate Mexican archives, as the Department has been advised by the United States Embassy in Mexico City, but these copies have not yet reached Washington. Notice is hereby accordingly given that the United States reserves the right to move to introduce certified copies of these concessions as "further documentary evidence," which in accordance with the convention of June 24, 1910, may be introduced at the trial "if the Commission so decides." [c]

Second. It will be noted that on pages 185 to 203 of the Appendix to the Countercase of the United States, certain affidavits have been printed "showing the open and unopposed exercise of jurisdiction of every kind over the Chamizal Tract by the officers of the United States, the State of Texas and the County and City of El Paso, Texas." In introducing these affidavits of gentlemen, all of whom are at present residents of El Paso, and who can presumably readily be called to the witness stand at the time of the trial, the United States is merely putting their evidence before the Tribunal in a convenient form. Should this evidence be disputed and should the Mexican Agent desire to have these witnesses give their testimony in open court with opportunity for cross-examination, the United States would recognize the entire propriety of this course and reserves a similar liberty for the United States in case such a course should seem necessary or appropriate.

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[a] See U. S. Countercase, pp. 172 to 185.

[b] See Article I, Concession of Oct. 21, 1902, U. S. Countercase Appendix, p. 183.

[c] Convention of June 24, 1910, Article 4, U. S. Case Appendix, p. 4.

CONCLUSION.

In conclusion the United States reaffirms and maintains the conclusions set forth in the Case of the United States as to the law and facts, and submits in answer to the Case and documentary evidence of Mexico that the record in this case shows that the United States has acquired good title by prescription to the tract in dispute, in addition to its title under treaty provisions construed in accordance with the principles of international law, which has already been set forth in the Case of the United States.

Wherefore the United States respectfully renews its request that the International Boundary Commission find the international title to the Chamizal Tract be in the United States of America.

WILLIAM CULLEN DENNIS,
Agent of the United States.

WALTER B. GRANT,
Counsel for the United States.

RICHARD F. BURGES,
Associate Counsel for the United States.

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71210—11——1

AGREEMENT BETWEEN THE AGENT OF THE UNITED STATES AND THE AGENT OF MEXICO FOR THE RECIPROCAL INSPECTION OF DOCUMENTS PRINTED OR RELIED UPON IN THE RESPECTIVE CASES AND COUNTERCASES.

Mr. Dennis to Señor Casasus.

MARCH 18, 1911.

Señor Don JOAQUIN D. CASASUS,

Agent of the United States of Mexico in the Chamizal Arbitration.

SIR:

With a view to facilitating the proceedings before the International Boundary Commission in the trial of the Chamizal Case in May next, I have the honor to submit for your consideration, the following suggestions:

The Treaty of June 24, 1910, submitting the Chamizal Case to arbitration, provides, in Article 5, that "each Government shall present to the Agent of the other party two or more printed copies of its case, together with the documentary evidence upon which it relies". It further provides for the presentation of a counter-case with "accompanying documentary evidence". The Treaty of March 1, 1889, establishing the International Boundary Commission, provides, in Article 7, that the Commission "shall have power to call for papers and information and it shall be the duty of the authorities of each of the two governments to send it any papers that it may call for relating to any boundary question in which it may have jurisdiction". In view of the language of these treaties, it would seem that both parties will be under obligations to produce, at the trial of the Chamizal Case, the original or certified copies, as may be ordered by the Tribunal, of the documentary evidence upon which they rely, together with any other papers relating to the Chamizal Case which may be called for by the Tribunal. Considering the inconvenience and delay which might result from the necessity of presenting to the Tribunal, either the original documents, or certified copies of the voluminous evidence printed or relied on in the cases and counter-cases of both parties, I have the honor to suggest the advisability of an arrangement for a reciprocal inspection, prior to the meeting of the Tribunal, of

the original documents and records printed or relied on in the respective cases and counter-cases. It is unnecessary to suggest that such an inspection has been resorted to in other arbitrations, as for instance, in the arbitrations between the United States and Great Britain, with respect to the Fur Seals, the Alaska Boundary, and the North Atlantic Coast Fisheries. In order that this proposition may be before you in a definite and tangible form, I venture to propose for your consideration, the following tentative outline of an arrangement for carrying out the foregoing suggestion. It is agreed by the Agents of the two Governments as follows:

1. That within ten days after this agreement goes into effect, the United States Embassy in Mexico may furnish a list to the Mexican Foreign Office for the Mexican Agent, of the documents or records printed or relied upon in the Mexican Case, the originals of which it is desired to inspect;

2. That as soon as may be, and within five days, a Representative of the Embassy of the United States in Mexico City shall be permitted to inspect the originals of these documents or records so far as they may be in the Mexican archives at Mexico City;

3. That the Agent of the United States may present a similar list to the Mexican Embassy in Washington and shall in like manner, within five days be permitted to inspect any documents or records printed or relied upon in the Mexican Case, the originals of which may be in the archives of the Mexican Embassy in Washington;

4. That, within ten days after this agreement goes into effect, the Mexican Embassy in Washington may furnish a list, to the State Department of the United States for the Agent of the United States, of the documents or records printed or relied upon in the case of the United States, the originals of which it is desired to inspect;

5. That as soon as may be, and within five days, a Representative of the Mexican Embassy in Washington shall be permitted to inspect the originals of these documents or records, so far as they may be in the archives of the United States at Washington;

6. That the Mexican Agent may present a similar list to the Embassy of the United States in Mexico City and shall in like manner, within five days, be permitted to inspect any documents or records printed or relied upon in the case of the United States, the originals of which may be in the archives of the Embassy of the United States in Mexico City;

7. That in case the originals of any documents or records are in the files of the United States or Mexican Sections of the International Boundary Commission, they shall be produced on request, as soon as may be, either at Washington or Mexico City, or at the offices of the respective sections in El Paso, Texas, as may be most convenient;

8. That either party inspecting any document under the terms of this agreement, shall be permitted, at the expense of that party, to take a certified copy of the document or record so inspected;

9. That it is agreed by both Agents that subject to any order which the International Boundary Commission, acting upon its own initiative may make in the premises, both Agents waive the production at the trial of the following:

a. Any document or record printed or relied upon in the cases, the inspection of which was not requested in accordance with the terms of this agreement;

b. Any document or record, the inspection of which was requested, unless notice of the intention to move for the production of the original or a certified copy of said document shall have been given to the opposing Agent within twenty days after such inspection shall have been granted;

10. The notice required by No. 9, Section "b", may be filed with the Mexican Embassy in the City of Washington, or with the Embassy of the United States in the City of Mexico, as the case may be.

11. That the foregoing arrangement applies mutatis mutandis to the inspection of originals of documents or records printed or relied upon in the respective counter-cases except that the two Agents shall have until May first to present their respective lists of documents or records, the inspection of which is requested.

Trusting that the foregoing suggestions may meet with your approval, and with the assurances of my highest consideration, I have the honor to be, Sir,

Your obedient servant,

WILLIAM CULLEN DENNIS,
Agent of the United States of America
in the Chamizal Arbitration.

Señor Casasus to Mr. Dennis.

[Joaquín D. Casasus, 3ª de San Agustin No. 62. Apartado 73B. Teléfono 386.]

MÉXICO, *April 5, 1911.*

Hon. WILLIAM C. DENNIS,

Agent of the United States of America in the Chamizal Arbitration.

SIR:

I have received your communication dated March 18th in which, with a view to facilitating the proceedings before the International Boundary Commission in the trial of the Chamizal case in May next you submit some suggestions as follows:

1. That within ten days after this agreement goes into effect, the United States Embassy in Mexico may furnish a list to the Mexican Foreign Office for the Mexican Agent, of the documents or records printed or relied upon in the Mexican Case, the originals of which it is desired to inspect;

2. That as soon as may be, and within five days, a Representative of the Embassy of the United States in Mexico City shall be permitted to inspect the originals of these documents or records so far as they may be in the Mexican archives at Mexico City;

3. That the Agent of the United States may present a similar list to the Mexican Embassy in Washington and shall in like manner, within five days be permitted to inspect any documents or records printed or relied upon in the Mexican Case, the originals of which may be in the archives of the Mexican Embassy in Washington;

4. That, within ten days after this agreement goes into effect, the Mexican Embassy in Washington may furnish a list, to the State Department of the United States for the Agent of the United States, of the documents or records printed or relied upon in the case of the United States, the originals of which it is desired to inspect;

5. That as soon as may be, and within five days, a Representative of the Mexican Embassy in Washington shall be permitted to inspect the originals of these documents or records, so far as they may be in the archives of the United States at Washington;

6. That the Mexican Agent may present a similar list to the Embassy of the United States in Mexico City and shall in like manner, within five days, be permitted to inspect any documents or records printed or relied upon in the case of the United States, the originals of which may be in the archives of the Embassy of the United States in Mexico City;

7. That in case the originals of any documents or records are in the files of the United States or Mexican Sections of the International Boundary Commission, they shall be produced on request, as soon as may be, either at Washington or Mexico City, or at the offices of the respective sections in El Paso, Texas, as may be most convenient;

8. That either party inspecting any document under the terms of this agreement, shall be permitted, at the expense of that party, to take a certified copy of the document or record so inspected;

9. That it is agreed by both Agents that subject to any order which the International Boundary Commission, acting upon its own initiative may make in the premises, both Agents waive the production at the trial of the following:

a. Any document or record printed or relied upon in the cases, the inspection of which was not requested in accordance with the terms of this agreement;

b. Any document or record, the inspection of which was requested, unless notice of the intention to move for the production of the original or a certified copy of said document shall have been given to the opposing Agent within twenty days after such inspection shall have been granted;

10. The notice required by No. 9 Section "b," may be filed with the Mexican Embassy in the City of Washington, or with the Embassy of the United States in the City of Mexico, as the case may be;

11. That the foregoing arrangement applies mutatis mutandis to the inspection of originals of documents or records printed or relied upon in the respective counter-cases except that the two Agents shall have until May first to present their respective lists of documents or records, the inspection of which is requested.

I did not reply as soon as I received your note because it arrived while Mr. Francisco L. de la Barra our new Secretary of State was on his way to Mexico, and I considered that it was convenient to consult his opinion.

Now I have the pleasure to say that your suggestions meet my approval and that therefore your proposals are accepted.

As this letter will take six days to reach you, we may consider that the agreement goes into effect on the 15th instant.

With the assurance of my highest consideration, I have the honor to be, sir,

Your obedient servant,

JOAQUIN D. CASASUS

Agent of the United States of Mexico in the Chamizal Arbitration.

PROCEEDINGS IN CHAMIZAL CASE No. 4

BEFORE THE INTERNATIONAL BOUNDARY COMMISSION—UNITED STATES AND MEXICO

APPLICATION OF JUAN MARIA PONCE DE LEON FOR A GRANT OF TWO CABELLERIAS OF LAND OPPOSITE PASO DEL NORTE, THE GRANT OF THE SAME AND THE SURVEY AND FIELD NOTES THEREOF.[a]

No. 325. Numero 1. Presentacion de Ponze al Presidente. Sor. Presidente de este Partido, El C. Juan Ma Ponce de Leon vecino de esta villa del Paso Ante V. como mejor alla lugar en derecho se presenta y dice. Que hase el espacio de ocho meces tiene empretado de su S. S. el ayuntamiento de la meama le mande posecionar del Terreno de la otra Banda (que con su permiso descubrio para labor segun consta de expediente formado de ante mano) y asta la presente no se ha efectuado por justos motibos que interrumpieron su huso e hicieron ocurrio a Consulta al Superior Gobierno cual hallandose en esta dicha villa y evacuado lo practicado en ella pide que V. se cirba mandarcele de copia alcalse de este tanto de lo resuelto por quella authoridad como del cumplimiento q. se le dio todo para los usos q. le conbengan por tanto. A. V. rendi'damte pido y suplico mande hacer como impetro en q. recibire gracia y justicia Juro y lo necesario.

VILLA DEL PASO *Septiembre 21 de 1827.*

Juan Ma Ponze de Leon, Decieto del Precidente. Paso Septiembre 21 de 1827. Por presentado y admitido Agase como pide

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[a] [The Joint Journal of the International Boundary Commission for May 12, 1896, contains the following passage:

"The witnesses Samaniego and Varela not being present, the United States Commissioner then presented certified copies of four official papers dated September 21st and 24th, 1827, from the Public Archives of Paso del Norte, Book No. 12, pages 59, 60, 61, and 62, corresponding to the year 1827, which embraces the application of Juan Maria Ponce de Leon for a grant of two caballerias of land opposite Paso del Norte, the grant of the same and the survey and field notes thereof; these two caballerias being the same that accretions thereto are the subject of this investigation, and for a more intelligent understanding of the case he requests that the Consulting Engineers be directed to plat the survey of the two caballerias on the sketch of the land, now in preparation by them, and that the papers above referred to be attached to the proceedings in the case." U. S. Case Appendix pp. 147 and 148.

The "four official papers" here referred to and directed to be "attached to the proceedings of the case" were not printed in the proceedings of the International (Water) Boundary Commission and have not been found in the archives of the United States. The representatives of the United States have thus far not succeeded in obtaining copies of these documents from the public archives of Ciudad Juarez. The documents, however, are transcribed in book "A" of the records of El Paso County and are here printed as they appear in these records.—Agent's note.]

la parto. Ramires. Eutimio Balberde Secretario. derechos un peso. Orden del Supremo Gobierno En concepto de que las tierras q. ha ganado D. Juan Ma Ponze de Leon pertenesen a los propios de esa villa y en el de que segun se concive del oficio de V. de 7 del corriente lo ha hecho con conocimiento del ayuntamiento de la misma este se halla en el caso de comicionar peritos alvadores q. en consideracion al estado en q. se hallaba el terreno cuando lo pretendio el interesado le asignen el precio q. paresca mas justo y equitatibo y q. el ayuntamiento por medio de una acta disponga se le de posecion entregando al comprador testimonio de ella para q. le sirba de titulo: Esto es lo que le parece al Gobierno advertir a V. en contestacion a su ofrecio sitado Dios y Libertad Chihuahua 13 de Agosto de 1827, Lic Bustamente Garcia Secretario—Sor. Precidente del Ayuntamiento de la villa del Paso—Es copia Paso 21 de Septiembre de 1827—Ramires—Balberde Secretario Consecion del Ayuntamiento—En la villa de Nuestra Senora del Paso del Norte a los veinte dias del mes de Septiembre de mil ochocientos veinte y siete. Abiendoci presentado la comicion nombrada en secion veinte y tres de Agosto ultimo para el Abaluo del terreno de D. Juan Ma Ponze a participar de sus operaciones dijeron. Que arreglandose a los dispuesto por el Supremo Gobierno del Estado en Orden del 13 del sitado agosto valoraron dho. terreno q. se compone de dos caballerias en cantidad de ochenta pesos siendo de conformidad los dos abaluadores y el tercero en discordia hasi como tambien lo fue el interesado y por cuyo advernimiento este ylustre cuerpo capitular concede posecion legitima al nominado D. Juan Ma Ponze de los terrenos valorados de los cuales puede haser el uso que le conbenga como su propio y legitimo dueno y ninguna autoridad corporacion o persona le impidira el libreuso que le corresponde haser de dhas. dos caballerias de tierra y dispuso que de la presentiacta se le de al referido Ponze testimonio integro a fen de que le sirba de titulo en forma y resguardo de su derecho el de sus hijos herederos y subsesores y para la devida constancia firmo lo presente providencia el ylustre ayuntamiento por ante mi el secretario de que doy fee—Ramires—alvo—Rascon—Montes—Peres—cordoba sendico—Eutimio Balberde secretario—Derechos catorce riales—Escrito de Ponce al alcalde—Sor. Alcalde 1° El ciudadano Juan Ma Ponze de Leon Vecino de esta villa del Paso ante V. como mejor halla lugar en derecho me presento y digo que al mio combiene el q. su autoridad despues de impuesto de

lo practecado en el anterior espediente de venta que se me ha hecho por este ayuntamiento de dos caballerias de tierra de la otra Banda del rio a distancia de media leguo de esta dha. villa se sirba pasar al paraje donde se me ha de entregar las que medidas y senalados sus limites pido se me de posecion nacional de ellas facelitandome higualmente la correspondiente copia q. me sirba de titulo y resguardo a mi, mis hijos herederos y subsesores Por tanto—A V. pido y suplico mande hacer como impetro en que recibire justicia juro y lo necesario Villa del Paso Septiembre 24 de 1827—Juan Ma Ponze de Leon—Paso Septiembre 24 de 1827 Proveido del jues. Por presentado y admitido con los documentos q. ensertos anteseden procedase a la consecion de lo que solicita Provellolo asi el alcalde 1° de esta villa y lo firmo con los testigos de asistencia segun probiene la ley de que sertifico Agapito alvo de asistencia Reyes Romero de asistencia Ramon Dias de la Serna Deligencia y posecion—En la villa del Paso a los veinte y cinco dias del mes de Septiembre de mil ochocientos veinte y siete. Yo el C. Alcalde en vesta del auto probeido que antecede devia determinar y determine pasar al terreno q. se refiere acompanado del Sindico procurador interino C. Jose Ma Cuaron y los testigos de mi asistencia en cuya presencia y la del interesado se procedio a la mensura en la forma siguiente comenzo la medida en donde trosa la acequia a la que saco el difento D. Fabier Bernal en la punta de una loma donde mande poner mohonera de cal y piedra tomando el rumbo de Poniente a Oriente por el lado del, Norte tubo una caballeria a la cual se le aumentaron quimintas treinta y cinco varas por la desproporcion de estar triangular el terreno de suerte q. en el Sentro solo tiene de ancho docientas veinte y cinco varas con lo cual se dio por concluida la primer caballeria y se continuo midiendo la otra seguindo el rumbro de Poniente a oriente costado del Norte y a orilla de las lomas quedando dentro todo lo que se puede cultivar y pr. el sur linda con el Rio y tiene Setecientas cincuenta varas respecto a haberle aumentado docientas cuarenta varas por el ancho q falto en la otra caballeria en cuyos terminos se conclulleron dhas. mensuras sin que hubiese reclamo alguno que se opuciese por lo que y a su consecuencia yo el Enunciado Jueztome de la mano derecha al interesado Ponze lo pacie por sus dos caballerias de tierra en la q arranco terrones esparciendolos por los cuatro bientos e hiso otros actos de berdadera posecion y dominio que le de a nombre de la soberania de la nacion que adquirio quieta y pacificamente y por ella lo amparo defiendo y mando que no sea

despojado de d'hos terrenos sin que primero sea hoido y por fuero y derecho vencedo y en fee de ello firmo la presente escritura con el cindico interino de esta villa los instrumentales q se nominaran y con los testigos de asistencia segun la ley de que Sertifico—Agapito Alvo—Jose Ma Cuaron Sindico—instrumental Juan Ma Barela—instrumental Santos Orcasitas—instrumental Ramon Dias de la Serna—De asistencia Reyes Romero—de asistencia Pedro Leyba—Concuerda con su original y se entriga a la parte para titulo y resguardo de su derecho el de sus hijos herederos y subsesores y en testimonio lo firmo yo el nominado Juez con los testigos de mi asistencia de que sertifico Agapito Alvo de asistencia Reyes Romero de asistencia Pedro Leyba—Numero 2. De acuerdo con el informe que paso a inspeccionar el terreno con q V. Solicita se le remplace el que las abenidas del rio le minoro en los de su propriedad a resuelto su S. S. Ayunta—miento que solo se le de la Plalla a q al indis de sus tierras dejaron las creses indicadas no pudiendose amplearle mas en atencion a los perjuiciosos que de ellos resultario al vecindario.

Dios y Libertad Paso Mayo 4 de 1830—Jose Ma Cordoba. Julian Bernal Secretario—Sr. D. Juan Ma Ponze de Leon—Es copia de su Original de Donde se saco fiel y legalmte. hoy primero de Marzo de mil ochocientos treinta y tres mismo que se saco a pedimento del C. Juan Ma Ponze de Leon en este papal comun por inopia del q. corresponde pero en prebencion de q. la parte deve reponerlo. En cuya virtud yo el ciudo. Ramon Dias de la Serna Alcalde tercero constitucional de este lugar asi lo sertifico y firmo con los de mi asistencia doy fee Ramon Dias de la Serna de asistencia Lazaro Archuleta de asistencia Jose Antonio Barela—Derechos dos pesos asi lo juro. The State of Texas,—County of El Paso, Befre. me Jarvia Hubbell *at* Notary Public duly commissioned in and for said County and State aforesaid personally appeared Jose Ma Cordova *to* well known who after being duly sworn according to law declares and says: that Agapito Alvo, President of the Ayuntamiento the, Grantor of the foregoing instrument of writing subscribed the same in his presence and that he the said Cordova signed his name thereto as Sindico and witness at request of said Grantor. In testimony whereof I hereto sign my name and affix my official seal at Franklin this 9th day of September A. D. 1852.
[No seal.] J. HUBBELL, *Notary Public.*

Note in page 328 the words "de la comicion" in line eleventh from the bottom in copy were omitted, being in original. T. I. Miller, Reg. A true copy: Filed for registration on the 11th *th*

day of September A. D. 1852, at 8 o'clock A. M. and duly recorded on the day and date above mentioned. T. I. Miller, C. C. C. E. P. C.

THE STATE OF TEXAS,
County of El Paso.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the Petition and deed to D. Juan Ma Ponze de Leon, as the same appears of record in Book A, page 324 of the Deed Records of said County.

Given under my hand and the seal of said Court, at office in El Paso this the 8th day of April, A. D. 1911.

Attest:

[SEAL] PARK W. PITMAN, *County Clerk.*
By C. ARANDA, *Deputy.*

[Summarized translation.]

PETITION OF PONCE TO THE PRESIDENT OF THE DISTRICT.[a]

Recites that Juan Ma. Ponce de Leon, a resident citizen of the town of El Paso, (now Juarez, Mexico), eight months ago filed with the Hon. Ayuntamiento (town council) of this town an application in which he asked to be placed in possession of the tract of land on the other side of the river, which land he was permitted by said Ayuntamiento to clear off for farming purposes, and that possession has not been given, owing to the fact that the State Government had to be consulted in the matter. And as a decision of the Government has been received, petitioner prays for a copy of said decision, and information as to the action taken thereon.

Town of El Paso, September 21st, 1827.

(Signed) JUAN MA. PONCE DE LEON.

DECREE OF THE PRESIDENT.

PASO, *September 21st, 1827.*

The above was presented and admitted. Let the petitioner's request be granted.

(Signed) RAMIREZ.
EUTIMIO BALBERDE, *Secretary.*

Fee One Dollar.

[a] [This summarized translation of the application of Ponce de Leon for a grant of land near El Paso and the grant and survey of same which does not purport to be a complete or litteral translation of the documents which contain numerous obsolete and technical expressions, is furnished from the files of the Pioneer Abstract Company of El Paso, Texas, and is believed to sufficiently convey the substance of the original documents.—Agent's note.]

ORDER OF THE SUPREME GOVERNMENT.

Whereas, the lands located by Don Juan Ma. Ponce de Leon belong to the inhabitants of that town, and whereas, as intimated in your official communication of the 7th instant, the location was made with the knowledge of the Ayuntamiento of said town, it is now the duty of said Ayuntamiento to appoint expert appraisers, who, taking into consideration the condition in which the land was found at the time of the location by Ponce de Leon, will fix a just and reasonable price for said land. And said Ayuntamiento will enter an order or decree, ordering that possession of said land be given, and the purchaser will be furnished with a certified copy of the proceedings had at the time of his taking possession of the land, which will be his title to the same.

God and Liberty.

CHIHUAHUA, *August 13th, 1827.*

Attorney, BUSTAMANTE.

Attest:

GARCIA, *Secretary.*

To the President of the Ayuntamiento of the town of El Paso: The above is a copy.

PASO, *September 21st, 1827.*

RAMIREZ.

BALBERDE, *Secretary.*

CONCESSION OF THE AYUNTAMIENTO.

In the town of Our Lady of Paso del Norte, on September 20th, 1827, the committee appointed in session of August 23rd last, to appraise the lands of Don Juan Ma. Ponce, reported that they have appraised the land, consisting of two caballerias, in the sum of $80.00. Now therefore, the Hon. Ayuntamiento grants legitimate possession to said Juan Ma. Ponce of the appraised lands, and he can make whatever use he may see fit to make of said land, as the rightful and legitimate owner; and no authority, corporation or person will interfere with him in the free use of said two caballerias of land. Ordered that a certified copy of this proceeding be given said Ponce, to serve as a legal title to protect his rights to said land, and the rights of his children, heirs and successors.

In witness whereof, the Hon. Ayuntamiento subscribe their names to the foregoing decree in the presence of the Secretary, to which I certify.

(Signed.) RAMIRES-ALVO-RASCON-MONTES-PEREZ-CORDOVA, *Attorney for the Ayuntamiento.*
EUTIMIO BALVERDE, *Secretary.*

Fees 14 Reales.

PETITION OF PONCE TO THE ALCALDE IST.

I pray in regard to the sale by the Ayuntamiento of two caballerias of land, situated on the other side of the river, half a league distant from this Town, that you go to where said land is situated, which has been turned over to me; and when the measurement is made and the boundaries established that you give me national possession of said land, as well as the certified copy of the proceedings had, which will serve as a title and protection for myself, my children, heirs and successors—I take the necessary oath. Town of El Paso, September 24th, 1827.

(Signed.) JUAN MA. PONCE DE LEON.

DECREE OF THE JUDGE.

PASO, *September 24, 1827.*

Presented and admitted with the foregoing documents. Let the concession be granted as prayed for.

In witness whereof the Alcalde 1st of this Town subscribes his name with assisting witnesses, as the law provides. To which I certify.

AGAPITO ALVO.

Assisting witnesses, REYES ROMERO.
do do , RAMON DIAS DE LA SERNA

PROCEDURE AND POSSESSION.

On Sept. 25, 1827. I, the citizen Alcalde, in view of the foregoing order, do determine to go in person to the land referred to, accompanied by the Ayuntamiento Atty. ad-interim, Citizen Jose Ma. Cuaron, the petitioner, and my assisting witnesses, in presence of whom the survey was commenced in the following manner to wit: Beginning at a point where ditch crosses the one dug by Don Jabier Bernal deceased, at the point of a hill, where I ordered a monument of lime and stone to be erected; thence

from west to east on the side of the north one caballeria was measured, to which was added 535 varas because of the disproportion of the land, which is triangular in shape: consequently in the center it is only 225 varas wide, this concluding the survey of the 1st caballeria. The Survey of the other caballeria was continued by beginning from west to east on the side of the north and along the hill sides, including all the land that can be cultivated, bounded on the south side by the river a distance of 750 varas, having added 240 varas because of limited width of former caballeria, the surveys having been concluded without any person claiming or opposing the same. I, said Judge, took Ponce, the party interested, by the right hand, walked with him over his two caballerias of land, from which he took pieces of earth which he spread in the four directions of the compass, and performed other acts of true possession and dominion, which I granted him in the name of the Sovereignty of the Nation, and which he has acquired quietly and peacably, in which I protect and defend him, and hereby order that he be not deprived of said lands without first being heard and due process and judgment of the courts be had in his behalf. In witness whereof, I hereunto sign my name with the Ayuntamiento Atty. ad-interim, the instrumental witnesses who were appointed for the occasion, and assisting witnesses provided by law. To which I certify.

AGAPITO ALVO.
JOSE MA. CUARON, *Attorney.*

Instrumental witness, JUAN MA. BARELA.
do do , SANTOS ORCASITAS.
do do , RAMON DIAS DE LA SERNA.
Assisting witness, , REYES ROMERO.
do do , PEDRO LEYBA.

The above is a true and correct copy of the original, and is delivered to the grantee as a title and security of his right, the right of his children, heirs and successors. In testimony of which, I, said Judge, subscribe my name, with my assisting witnesses. To which I certify.

AGAPITO ALVO.

Assisting witness, REYES ROMERO.
do do , PEDRO LEYBA.

NUMBER TWO.

Agreeable to the report of the committee heretofore appointed, which went and examined the land for which you make application, praying that the land that was washed away by the high waters of the river be replaced, this Hon. Ayuntamiento has decreed that you will be granted only the new land made by the river next to your property, this Ayuntamiento being unable to make any further concession, owing to the injury that would result to the inhabitants thereof. God and Liberty.

PASO, *May 4, 1830.*

JOSE MA. CORDOBA.
JULIAN BERNAL, *Secretary.*

To Mr. Juan Ma. Ponce de Leon.

The above is a true copy of the original, made this March 1, 1833, at request of Citizen Juan Ma. Ponce de Leon, on common paper for want of the other, but with the understanding that grantee will have to replace it. I, the citizen Ramon Diaz de la Serna, 3rd constitutional Alcalde of this town, certify and subscribe to the same, with my assisting witnesses.

RAMON DIAS DE LA SERNA.
LASARO ARCHULETA, *Asstg. witness.*
JOSE ANTONIO BARELA, *do do.*

Fees $2.00.

THE STATE OF TEXAS, }
County of El Paso. }

Before me, Jarvis Hubbell, a Notary Public duly commissioned in and for said County and State aforesaid, personally appeared Jose Ma. Cordova to me well known, who after being duly sworn according to law declares and says, that Agapito Alvo, President of the Ayuntamiento, the grantor of the foregoing instrument of writing, subscribed the same in his presence, and that he, the said Cordova, signed his name thereto as sindico and witness, at request of said grantor—

In testimony whereof, I hereto sign my name and affix my official seal at Franklin, this 9th day of September, A. D. 1852.

J. HUBBELL, *Notary Public.*

DOCUMENTS AND PROCEEDINGS RELATING TO THE APPLICATION OF THE MEXICAN COMMISSIONER FOR THE REOPENING OF THE CHAMIZAL CASE.

Señor Osorno to Colonel Mills.

Anexo número 1 al Acta de Agosto 10 de 1896.[a]

CIUDAD JUÁREZ, *Julio de 1896.*

La Comisión Mixta se reunión en la oficina del Comisionado á las

En seguida el Comisionado mexicano manifestó que había leído con toda atención la réplica presentada por el Comisionado de los Estados Unidos, y consideraba de todo punto indispensable que constasen por acta algunas rectificaciones y aclaraciones muy importantes, á fin de que, las personas que tuviesen que decidir en lo futuro el caso de "El Chamizal", no careciesen de ninguno de los datos necesarios para pronunciar un fallo justo y equitativo en favor de la reclamación presentada por el Gobierno de México.

Las observaciones y aclaraciones acerca de las cuales se llama muy especialmente la atención, que pueden servir como de síntesis y que, en gracia de la claridad y concisión, presenta aquí el Comisionado mexicano en forma de notas y citando las páginas relativas del acta en que consta la réplica del Comisionado americano, son las siguientes:

No. 1, p. 2.—Opina el Comisionado americano que para resolver acertadamente este caso, debe sacársele del dominio del derecho internacional y decidirlo únicamente conforme á los artículos 1 y 2 de la Convención de 1884 celebrada entre México y los Estados Unidos. Así lo ha hecho en sus conclusiones el Comisionado mexicano, tanto más cuanto que, como ya manifestó allí mismo, los artículos 1 y 2 de la Convención citada son la expresión exacta de la doctrina sostenida por don Andrés Bello y don José

[a] [An English translation of this letter is printed in the U. S. case appendix, pages 322 to 325. As explained in the footnote to page 322, the translation there printed was evidently hastily made, and the original Spanish was not to be found in the archives of the U. S. The Spanish original here printed has been supplied through the courtesy of Señor Don F. B. Puga, the Mexican Commissioner upon the International Boundary Commission. A comparison of this Spanish original with the English translation printed in the appendix to the case of the U. S. shows a number of minor errors and infelicities, but it is believed that none of these are sufficiently important or relevant to the present matter to make it worth while to note them here. As stated in the footnote referred to, it is believed that the translation there printed is "perfectly intelligible and entirely sufficient for all practical purposes."—Agent's note.]

María Pando y aceptada por el Attorney General Cushing. Pero lo que no ha podido menos que sorprender al Comisionado mexicano es que el Comisionado americano mutile el texto del artículo 2 y le suprima estas palabras que son las de principal aplicación en el presente caso: "Cualquier otro cambio ocasionado por la fuerza de la corriente * * *". Más adelante se verá el motivo de semejante mutilación, hecha intencionalmente para apoyar un sofisma. (Véase el final, páginas 14 y 15.)

No. 2, p. 4.—Seguramente porque el señor Comisionado de los Estados Unidos comprende cuán absurdo sería seguir sosteniendo que el cambio efectuado por el río en el espacio de pocos años, de 1864 á 1868, sólo durante las crecientes y con tal fuerza que destruía casas y sementeras en el terreno de "El Chamizal", fue debido á una *corrosión lenta y gradual*, tiene ahora la peregrina ocurrencia de afirmar que donde dice el tratado claramente en español *corrosión* debe entenderse *erosión*, y que *corrosión* no es en inglés sinónimo de *erosión*. De manera que el señor Mills afirma tácitamente que si la palabra del tratado que debiera seguirse como norma fuera la de *corrosión*, no podría sostenerse ya por más tiempo que ésta hubiese sido *lenta y gradual;* pero como de lo que se trata es de una *erosión*, que es sinónimo de *corrosión*, la tal *erosión* sí pudo ser lenta y gradual, á pesar de que el río se seca parte del año y no obstante la fuerza de destrucción de las avenidas. Ahora bien, el Comisionado mexicano no tiene que esforzarse mucho para probar que la palabra *corrosión* es la única que existe en español, la sola de que se vale el texto mejicano de la Convención de 1884 y la legal para resolver este caso. Con esto y con demostrar además que en opinión de Webster—autoridad que en el idioma inglés es sin duda superior á la del señor Coronel Mills—*erosión* es precisamente sinónimo de *corrosión*, la objeción presentada por el Comisionado de los Estados Unidos caerá por su base. La última edición del Diccionario de la Real Academis Española que tengo á la vista, en su página 444, salta del vocablo *erogatorio* á este otro: *erotema;* no hay por consiguiente *erosión* en castellano. Si, á pesar de esto, los firmantes hubieran intentado usar de la palabra *erosión* en el sentido geológico de que habla el señor Mills, entonces, no teniendo equivalente en castellano, se hubiera empleado la española *corrosión* y entre paréntesis la inglesa *erosion*, ó como precisamente se emplea la palabra inglesa *jetties*, subrayada, en el artículo 3 de la propia Convención de 1884. Véase ahora lo que dice el Diccionario Webster, edición de 1895

página 507, columna 3: "Erosion. 1. The act or operation of eroding or eating away. 2. The state of being eaten away; *corrosion;* canker." Esto es todo lo que el léxico citado trae acerca del vocablo *erosion.* Ya verá pues el señor Mills que, según la indiscutible autoridad de Webster, *erosión* ciertamente que es sinónimo de *corrosión* y que no tiene ninguna acepción geológica especial, causa por la que es de presumirse que el señor Comisionado americano no haya encontrado un ejemplo según sus palabras textuales:—"As I cannot find any instance of the use of corrosion in a geological sense," que tánto deseaba. Resumiendo: 1°, el texto legal redactado en español, y único que tiene fuerza obligatoria para México, trae la palabra *corrosión* y nó *erosión;* 2°, en inglés *erosion* es sinónimo de *corrosion;* 3°, toda la argumentación del señor Mills se ha encaminado á demostrar que en el caso de " El Chamizal " hubo una *erosión,* en el sentido geológico no definido por Webster y del que no ha podido encontrar ejemplo alguno que lo valga. Ergo: esa *erosión* que se ha forjado en su imaginación el señor Comisionado de los Estados Unidos nada tiene que ver con la *corrosión* de que habla el texto español del tratado de 1884, ni por consiguiente con el cambio de la línea divisoria fijada en 1852 por los planos de los señores Salazar y Emory.

No. 3, p. 5.—No es menos curioso este símil que, sólo en su excesivo anhelo de defender los intereses que se le tienen encomendados, ha imaginado el señor Mills:—Dice así: "Esta misma cita ejemplifica un progreso lento y gradual, como de la mitad de un período intermitente por el sueño y muy desigual en su modo de progreso, cuando despierta la imaginación y más ó ménos dispuesta á las apercepciones de diferentes períodos, desde la niñez á la vejez, se dice también de un hombre que crece lentamente hasta la madurez en veinte y un años, aunque tenga períodos espasmódicos de crecimiento rápido y lento tal como acontece con el río Bravo en Juárez, moviendo su cauce y sus bordes hacia el Sur lenta y gradualmente, por *erosión* gradual de la ribera mejicana y depósitos en la ribera de los Estados Unidos, mil cuatrocientos metros en cuarenta y tres años, del 1852 al 1895, ó sea un avance anual de treinta y dos metros." ¡Fenómeno, por cierto, nunca visto sería si existiesen esos "períodos espasmódicos de crecimiento rápido y lento, tal como acontece con el río Bravo en Juárez", sobre todo, cuando el río no está *enteramente seco!* Para que el símil de que se vale el Comisionado de los Estados Unidos fuera pertinente, sería preciso demostrar que el crecimiento del cuerpo

humano sólo se efectúa durante la vigilia y se interrumpe durante el sueño, lo cual es tan imposible como la *corrosión* que en sus riberas pueda causar el impetuoso río Bravo cuando se seca. Por lo demás, este "avance anual de treinta y dos metros" es puro sofisma, porque durante más de doce años consecutivos el río no cambió ó cambió imperceptiblemente, según la declaración de los testigos.

No. 4, p. 6.—Cáusale profunda extrañeza al señor Mills que el Comisionado mejicano haya asentado en sus conclusiones esta afirmación, tomada textualmente de la página 9 del informe que la Comisión mixta remitió á sus respectivos Gobiernos y que corre ya impreso: "los cambios del canal del río son debidos á verdaderas avulsiones", y añade que en esto se ha equivocado seriamente el Comisionado mejicano, sin comprender que las palabras citadas están escritas y firmadas por el mismo señor Mills. He aquí ahora cómo trata de explicar el Comisionado americano la patente contradicción que existe entre lo aseverado en Enero de 1895 y lo que ahora sostiene en 1896 con motivo del caso de "El Chamizal": "Lo que dijo el Comisionado de los Estados Unidos, y se puede lealmente entender por el texto completo del informe, es que los cambios avulsivos en la parte superior del río eran verdaderamente avulsiones, como se ha probado posteriormente en el fallo del caso de la "Isla de San Elizario", en contraposición á los casos de los bancos en la parte inferior del río. No se refería á los cambios lentos y graduales por corrosión y depósito." Claro es que el Comisionado americano no se refería, ni podía referirse, á los cambios lentos y graduales por corrosión porque jamá ha podido demostrar que existan en la sección del río Bravo entre El Paso y Presidio del Norte. Con lo cual queda aún mejor demostrada la contradicción en que ha incurrido el señor Mills.

No. 5, p. 12.—Desde la página 6 hasta el principio de la 12, el señor Comisionado americano entra en largas y minuciosas consideraciones sobre el examen que la Comisión Mixta hizo respecto de los bancos que se forman en la tercera sección del río Bravo, entre Río Grande City y el Golfo de México, y pretende relacionarlas con el caso enteramente distinto de "El Chamizal". Ante todo, conviene advertir que ha cometido el Comisionado americano un gravísimo error que al Comisionado mejicano conviene rectificar desde luego para la mejor inteligencia del punto, cuando llegare á conocimiento de sus respectivos Gobiernos. El Comisionado americano, sin autorización ninguna del Comisionado mejicano, redactó y publicó

en Wáshington unos "fallos probables" acerca de los bancos de Camargo, Granjeno, Vela y Santa Margarita. En estos fallos el Comisionado americano entra en consideraciones é hipótesis más ó menos aventuradas con las que no está ni ha podido estar de acuerdo el Comisionado mejicano, quien no les ha dado otra importancia que la de una opinión personal del señor Coronel Mills que á su debido tiempo se hubiera tenido que discutir. Tanto es así, que el Comisionado mejicano no solamente no ha consentido en dar por suya la opinión aventurada del señor Mills en esos fallos probables y extemporáneos, sino que ni los ha firmado y ni siguiera ha dado de ellos cuenta á su Gobierno por no considerarlos de ninguna importancia oficial, como en efecto no la tienen. Sin embargo, para que el Comisionado americano no suponga ni remotamente que el Comisionado mejicano desautoriza ahora esos fallos hipotéticos y extemporáneos del señor Coronel Mills, por lo que pudieren probar en contra de los intereses que el Gobierno de Méjico tiene en el presente caso de "El Chamizal", va por un instante á admitir, sin conceder, que ellos representan la opinión de ambos Comisionados; todavía más, que aprobados por sus Gobiernos tuvieran ya una fuerza legal: ¿qué podría lógicamente deducirse de allí ¿qué consecuencia podría inferirse de dos casos distintos y aun diferentes? ¿qué es lo que pretende demostrar el señor Mills con los cambios del río Bravo que se verifican en la sección que los Comisionados denominan: "de Rio Grande City al Golfo", que comprende 108 millas en línea directa y 241 siguiendo el curso del río, el cual corre por terrenos bajos de aluvión endonde la tierra tiene poca consistencia y tan suave pendiente (nótese bien, "suave pendiente") que el canal del río está cambiando de derecha á izquierda é incesantemente (no debe olvidarse este "incesantemente") corroyendo la ribera cóncava y haciendo depósitos en la convexa, tanto en las aguas bajas como en las altas, es decir, en todo tiempo, todo el año, incesantemente, aunque por supuesto los cambios son mucho mayores en la época de las crecientes?". Ciertamente que el señor Comisionado americano no va más atinado en esta argumentación *a pari*, que alega para comparar los cambios del río que se efectúan por medio de la formación de bancos en la parte inferior, de Río Grande City hacia abajo, y los que se han efectuado en "El Chamizal", ó sea en la parte superior, que en la que tan poco pertinentemente adujo antes respecto á los cambios del Missouri. En buena lógica, dos cosas iguales á una tercera son iguales entre sí; pero de dos cosas iguales entre sí jamás se podrá formar una argumentación a pari para probar su identidad con otra tercera. El

Bravo, en su parte superior y especialmente en terrenos de "El Chamizal", es un río de temporal que sólo efectúa sus cambios, y siempre con violencia (véase la declaración unánime de los testigos), en época de inundaciones y crecientes; río que jamás ha sido navegable y que en tiempo de secas deja de correr y, excepto en charcos separadas, su lecho queda enteramente seco—palabras textuales del Mayor Ernst. Consecuencia: los cambios efectuados en este río en su parte superior no pueden ni deben compararse con los que se verifican en su parte inferior, ni con los que acontecen en el Missouri: luego toda esa argumentación a pari sustentada por el Comisionado americano es írrita y de ningún valor.

No. 6, p. 13.—El Comisionado americano incurre en otra importante equivocación. Dice así: "En la página 8 de sus conclusiones manifiesta el hecho de que las riberas estando más altas cerca del río, no se explica el hecho de corrosión gradual. Vernon Harcourt, en su tratado de "Ríos y Canales", vol. 1, pág. 11, dice que en las estratificaciones permeables los valles están más altos cerca de las riberas, por razón de los depósitos producidos en época de inundaciones, y este hecho es bien conocido de todos los ingenieros hidráulicos." Esto que asegura el señor Mills no es exacto: el Comisionado mejicano no habló de riberas sino de todo el terreno disputado, véase la página 8 de sus conclusiones, que tiene una diferencia de nivel constante entre el lugar que ocupaba el canal de 1852 y el que actualmente tiene en 1896, lo que evidentemente no hubiera sucedido si el río lenta y gradualmente hubiera cambiado de un lugar al otro. Que las riberas de los ríos son más altas que el terreno que ocupa el valle, es una verdad tan evidente que puede admitirse sin recurrir á la autoridad de Vernon Harcourt; pero que el terreno todo por donde ha cambiado, paso á paso, lenta y gradualmente, un río no esté nivelado y presente las curvas de nivel que marca el mapa del señor Zayas, esto es lo inexplicable si por un momento se aceptaran las ideas del señor Mills.

No. 7, p. 13.—Asegura magistralmente el Comisionado de los Estados Unidos: "No se ha presentado testimonio demostrando que el río jamás se haya secado en el invierno." ¿Qué más testimonio quiere el señor Mills que el del Mayor O. H. Ernst, testimonio invocado por el mismo Comisionado americano y cuyas palabras textuales son las siguientes en inglés: "At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry."?.

No. 8, p. 13.—He aquí otra de las aseveraciones gratuitas y categóricas que el señor Mills lanza contra el Comisionado mejicano: "En la página 8 el Comisionado mejicano dice también entre comillas, como citando á un testigo: "que destruye presas; que arranca pedazos de terreno de hasta más de cincuenta yardas en unos cuantos minutos * * *" No hay testimonio que sostenga esta aseveración * * *" ¿Conque no hay testimonio que sostenga esta aseveración? Tómese el trabajo el señor Mills de revisar el acta del 14 de Abril y en la declaración de don Inocente Ochoa encontrará estas palabras: "* * * el (cambio) más importante tuvo lugar en 1864, cuando se DESTRUYÓ LA PRÉSA;", así como la del 20 de Abril, endonde consta la declaración del señor Provencio, y allí verá que el río "se llevaba pedazos de tierra de una y dos yardas constantemente, Á INTERVALOS DE UNOS CUANTOS MINUTOS.". No se necesitaban, pues, muchos minutos para que el río arrebatara cincuenta ó más yardas.

No. 9, p. 14.—Son tan repetidas las aseveraciones sin prueba que lanza el Comisionado americano que ya no causará extrañeza la siguiente que, sin embargo, importa mucho rectificar: "El silogismo del Comisionado mejicano debe desecharse no sólo porque no está probada su proposición menor, sino porque está abundantemente denegada por cada testigo que declaró en el caso, excepto Serna." Véase cuál es la proposición menor del silogismo del Comisionado mejicano: "Es así que el cambio del río en el caso denominado "El Chamizal" no tan sólo no ha sido lento y gradual sino violento y en períodos de tiempo de intermitencias desiguales." ¿Qué es, pues, lo que se tenía que probar por medio del testimonio de testigos?: que el cambio nunca fue por corrosión lenta y gradual, sino por el contrario sumamente violento y desigual. Véamos ahora si, como lo asegura el Comisionado americano, esto está abundamente denegado por cada testigo, excepto Serna. El primer testigo fue Serna y de éste no hay que hablar. El segundo, Don Inocente Ochoa, dijo: "El más importante tuvo lugar en 1864, cuando se destruyó la presa." "El mayor cambio ocurrido fue violento." El tercero, Don E. Provencio, declaró: "El primer cambio notable del río se verificó por el año de 1864." "Á veces hasta cincuenta yardas se arrancaban de ciertos puntos durante un día." "Esta obra de destrucción se efectuaba durante las grandes crecientes." El cuarto, don José M. Flores, aseguró: "que entre 1864 y 1868 la corriente vino con tal violencia que destruyó casas y labores." El quinto, Mr. . Schutz, dijo: "Las corrientes acaecieron entre 1864 y 1868 y

fueron de tal manera impetuosas que destruyeron casas y campos de labor." El sexto, Mr. J. Magoffin, declaró: "* * * este daño que causaba el río destrozando los bordes mejicanos * * *" El séptimo y último, el Dr. D. Mariano M. Samaniego, dijo: "En 1864 la corriente fue tan fuerte que destruyó los jetties construídos en la ribera mejicana." Las negaciones rotundas del señor Mills obligan al Comisionado mejicano á ser tal vez demasiado prolijo y á hacer frecuentemente hincapié en lo que ya creía demostrado; pero dígase ahora, con buena fe y lealtad, si puede haber una mayor unanimidad en las declaraciones de los siete testigos examinados para probar que el cambio de que se trata no fue debido á una corrosión lenta y gradual, sino á la fuerza y á la violencia de la corriente? Queda, pues, probada hasta la evidencia la verdad de la proposición menor del silogismo formulado por el Comisionado mejicano.

No. 10, p. 14.—El reproche que envuelven estas palabras del Comisionado de los Estados Unidos: "El Comisionado mejicano, en la revista que hace del caso de Nebraska vs. Iowa, en la Suprema Corte de Justicia de los Estados Unidos, ha citado abundantemente párrafos de la propia sentencia y numerosas autoridades á que ella se refiere en todo aquello que cree que apoya su caso; pero no cita aquella parte de la sentencia que clara y contundentemente falla que el cambio ocurrido allí no sólo fue lento y gradual sino imperceptible.", no merece más que esta contestación: los copiosos esquilmos que el Comisionado mejicano hizo de la sentencia de la Suprema Corte de Justicia no han tenido otro objeto que entresacar preceptos y doctrinas legales que no pudieran ser objetados por el Comisionado americano; pero en cuanto al examen y decisión del caso concreto de nada pueden servir en la cuestión debatida, pues las condiciones en que se verifican los cambios del río Missouri en nada se parecen á las que han concurrido para el cambio violento y avulsivo del Bravo en "El Chamizal". Como ya se dijo en la nota número 5, no se deduce en buena lógica que porque dos cosas son iguales entre sí deben también serlo con una tercera. Podrán ó nó parecerse los cambios del río Bravo verificados en la sección comprendida entre Rio Grande City y el Golfo á los que se efectúan en el Missouri; pero de ahí no se deduce que se parezcan á los del caso de "El Chamizal."

No. 11, p. 17.—Entre los argumentos más baladíes que se han aducido para invalidar el silogismo del Comisionado mejicano, en cuyas premisas casi no se emplean otras palabras que las del tratado, el siguiente sin duda se lleva la palma: "Todos los testigos, excepto

Serna, en el caso de 'El Chamizal' declararon que los depósitos en el río Grande eran imperceptibles, mientras que las corrosiones eran perceptibles, como lo eran en el Missouri, y ninguno de ellos declaró que permanecía seco durante medio año." Estos depósitos imperceptibles, que pudieran ser de alguna importancia si se efectuaran todo el año y en las mismas condiciones que en el Missouri, no tienen fuerza alguna en el caso de "El Chamizal". Ya sea que los testigos declaren que hubo esos depósitos imperceptibles, ya que se den por aceptados sin necesidad de mayor prueba, ¿quid inde?. Si el cambio del río no se verificó ahí por corrosión lenta y gradual, como se ha demostrado superabundantemente, sino por erosiones violentísimas y desiguales, no hay que parar mientes en esos depósitos, pues los términos del artículo I de la Convención de 1884 no dejan duda alguna á esto respecto. Dice este artículo: "La línea divisoria será siempre la fijada en dicho tratado y seguirá el centro del canal normal de los citados ríos, á pesar de las alteraciones en las riberas ó en el curso de esos ríos, con tal que dichas alteraciones se efectúen por causas naturales, como la corrosión lenta y gradual y el depósito del aluvión, y no por el abandono del canal existente del río y la apertura de uno nuevo."

De manera que para que las alteraciones modifiquen esa línea divisoria es requisito indispensable que tales alteraciones se efectúen por medio de corrosión "lenta y gradual *y depósito de aluvión,*" y nó "ó depósito de aluvión", esto es decir que el depósito de aluvión que no vaya acompañado de corrosión lenta y gradual, sino de erosión violenta, como en el caso de "El Chamizal," no alterará la línea divisoria de 1852. Ahora el otro punto. Dice el Comisionado de los Estados Unidos que ningún testigo declaró que el río permanecía seco durante medio año. Es cierto; pero si ningún testigo ha declarado tal cosa es porque no se les hizo pregunta alguna á este respecto, y aquí conviene hacer una importantísima rectificación. El Comisionado mejicano se propuso durante los interrogatorios demostrar este hecho muy importante: que en el caso de "El Chamizal" la corrosión lenta y gradual había sido imposible, y para conseguir su objeto el medio más adecuado era probar que el río sólo sufría cambios, y cambios violentísimos, en tiempo de las crecientes, y que durante medio año, poco más ó menos, bajaban las aguas á tal punto que no solamente no ocasionaban corrosión alguna, sino que se secaba del todo. El Comisionado mejicano creyó que con sólo el informe del Mayor O. H. Ernst, informe que el Comisionado de los Estados Unidos solicitó presentar como prueba pericial (palabras textuales

del acta de Mayo 7), el señor Mills daría por demostrado que en el tiempo de secas el agua deja de correr y que excepto en charcos separados el lecho queda ENTERAMENTE SECO, como lo afirma al pie de la letra el mismo señor Ernst. Tuvo además la precaución el Comisionado mejicano de hacer que constara en el acta lo siguiente: "El Comisionado mejicano manifestó en seguida que no tenía más testigos que presentar en este caso por la parte de Méjico, salvo que quería que constara el hecho de que el río no cambia en el invierno." "Á lo que replicó el Comisionado de los Estados Unidos que si bien no podía asegurar que nunca había cambiado en el invierno, lo cierto es que jamás ha sabido ú oído decir que se efectuaran cambios durante esa estación, por razón que las crecientes ocurren muy raras veces—si acaso las hay—durante los meses de invierno." Si, pues, por una parte el mismo testigo pericial presentado por el Comisionado de los Estados Unidos afirma que en tiempo determinado el río queda ENTERAMENTE SECO, y por la otra el propio señor Mills asevera que JAMÁS HA SABIDO Ú OÍDO DECIR que se efectúen cambios durante el invierno, ¿qué necesidad había de levantar especial información testimonial á este respecto? Sin embargo, si el Comisionado americano desea que se abra de nuevo á prueba este punto, el testimonio abrumador de centenares de personas le disiparán hasta la menor sombra de duda.

Por último, el Comisionado de los Estados Unidos recurre, á falta de mejores argumentos, á tristes lamentaciones sobre las consecuencias, en su concepto desastrosas, que se originarían de la recta aplicación de la Convención de 1884, tal como lo pide en justicia el Comisionado mejicano (véanse las páginas 19 á 20 inclusive de la réplica del señor Mills). Aun admitiendo, sin conceder, que todas esas lamentables consecuencias se originaran de la recta interpretación y aplicación de los artículos I y II del tratado de 1884, no es por cierto la Comisión Mixta la que tiene facultad para reformarlo. Los jueces no tienen otra misión que aplicar la ley, por duras que sean las consecuencias: dura lex, sed lex.

No. 12, p. 21.—Las conclusiones conque termina la réplica del Comisionado de los Estados Unidos son las siguientes:

Primera. "Vattel dice: lib. I, cap. 22, art. 268: En caso de duda, todo territorio que termina en un río se presume no tener otro límite que el río mismo, porque no hay cosa más natural que tomar un río para límite cuando se forma una colonia (settlement),

y en caso de duda debe presumirse aquello que es más natural y posible." Esta doctrina es seguramente aplicable en el caso de no existir tratados ó convenios internacionales. Cuando éstos existen son la suprema ley entre las naciones. La Convención de 1884 celebrada entre México y los Estados Unidos dice cuál es la línea divisoria entre ambas naciones y de qué modo y con qué condiciones puede cambiarse esa línea. No se trata pues de ningún caso dudoso; sino de la recta y clara interpretación de un tratado.

Segunda. "Durante 42 años, de 1852 á 1894, México no hizo uso de sus derechos, si los ha tenido, no solamente por no haber presentado ninguna reclamación sobre el terreno actualmente disputado, sino por haber consentido la jurisdicción sobre él de los Estados Unidos." El Comisionado mejicano llama seriamente la atención del Comisionado americano sobre que la Comisión Internacional de Límites no tiene facultad alguna para tomar en consideración, ni mucho menos decidir, acerca de la pérdida de los derechos de Méjico en virtud de una PRESCRIPCIÓN que, dicho sea de paso, no tiene ninguno de los caracteres que las leyes de todos los países exigen para producir su efecto y que en el presente caso es del todo impertinente.

Tercera. "Siendo Méjico el que joso, á él le corresponde probar el cambio avulsivo traído por "la apertura de un nuevo canal y el abandono del antiguo" y no basta que diga que el cambio no fue gradual, uniforme é incesante, porque entonces—no importando de qué manera haya cambiado—el cambio debe ser avulsivo y la antigua línea divisoria restablecida sin mayores pruebas, porque cualquiera otro cambio de los que implica la mayor de las premisas del silogismo del Comisionado mejicano y que debe ser alegado y probado, pudiera ocurrir por medios artificiales como jetties, muelles obstrucciones, dragas, etc. que están prohibidos en el artículo II de la Convención de 1884." Ya en la nota número 1 se llama la atención acerca del especialísimo cuidado que siempre tiene el Comisionado americano cada vez que cita el artículo II de la Convención de 1884 de suprimir estas palabras: "cualquier cambio ocasionado por la fuerza de la corriente", (véanse además las páginas 19 y 21), y aquí conviene explicar el motivo, que no es otro que deslizar un sofisma cuya falsedad puede demostrarse con este ejemplo. Supongamos que se tienen á la vista estos dos artículos de una ley:

ART. I. Se llama peculado el hurto de caudales del Erario hecho por aquel á quien está confiada su administración.

ART. II. Cualquier otro ("any other") hurto cometido por particulares, ya sea (" whether ") introduciendo efectos de comercio contra las leyes fiscales, no es peculado.

¿Qué diría el señor Mills si, dando á un ejemplo mayor extensión y valor que el que tiene, en el artículo II se sacara la consecuencia absurda de que únicamente el contrabando no es peculado? Pues este sofisma es precisamente el que comete el Comisionado americano al pretender que sólo el ejemplo citado en el artículo II de la Convención sirva de precepto general. Por lo demás, este requisito que tánto le preocupa de que las corrientes hayan "abierto un nuevo canal y el río haya abandonado el antiguo" está plenamente comprobado con sólo este hecho: EL CANAL QUE ACTUALMENTE OCUPA EL RÍO EN EL CHAMIZAL NO ES EL QUE TENÍA EN 1852, que con tanta claridad resalta en el plano de las curvas de nivel levantado por el señor Zayas.

Vanos son, pues, los esfuerzos que ha hecho el Comisionado de los Estados Unidos para salir de este círculo de hierro: ó el cambio fue por corrosión lenta y gradual ó no lo fue; si lo primero, la línea divisoria quedará en el lugar que actualmente ocupa el río; si lo segundo, deberá restablecerse al que tenía en 1852, cualesquiera que fueran las consecuencias lamentables que tánto preocupan al señor Mills, pero que de nada sirven para invalidar ni en un ápice la fuerza lógica de este argumentación. El Comisionado mejicano ha probado hasta la evidencia este hecho claro como la luz del día: que el cambio no ha sido por corrosión lenta y gradual, sino rapidísima, entre los años de 1864 á 1868, violentísima, destruyendo casas, árboles y sembrados, y nó gradual, pues no hubo cambio ó este cambio fue imperceptible desde 1852 á 1864, ó sean doce años, y el grande, notable, y que bastó por sí solo para nudar el lecho del río se verificó en los años siguientes, y sólo (nótese este *sólo*) en la época de las crecientes. Y ahora, pregunta el Comisionado mejicano ¿dónde se halla en todas las 22 páginas de la réplica del señor Mills una sola prueba, un solo hecho positivo y bien comprobado de que el cambio de que se trata fue lento y gradual? La contestación fácilmente la dará cualquiera que esto lea con espíritu sano é imparcial.

(Nota.—El anterior escrito no lleva firma alguna; pero por el texto del Acta se deduce ser del Comisionado de México en aquella época, licenciado don F. Javier Osorno).

Es copia fiel.—México, D. F., Febrero 6 de 1911.

F. B. PUGA,
Comisionado de Méjico.

DIPLOMATIC CORRESPONDENCE HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4

MEXICAN DRAFT OF THE CONVENTION OF JUNE 24, 1910, FOR THE ARBITRATION OF THE CHAMIZAL CASE.[a]

EMBAJADA DE MÉXICO EN LOS ESTADOS UNIDOS DE AMÉRICA.

Los Estados Unidos Mexicanos y los Estados Unidos de América, deseando terminar de acuerdo con los varios Tratados y Convenciones vigentes entre los dos países y según los principios del Derecho Internacional, las diferencias que han surgido entre los dos Gobiernos respecto del dominio eminente sobre el territorio de "El Chamizal," acerca del cual no han podido ponerse de acuerdo los miembros de la Comisión Internacional de Límites, han resuelto someter estas diferencias á dicha Comisión establecida por la Convención de 1889, que únicamente para este caso se ampliará como se estipula adelante, y han nombrado como sus respectivos Plenipotenciarios:

El Presidente de los Estados Unidos Mexicanos al señor don Francisco León de la Barra, Embajador Extraordinario y Plenipotenciario de los Estados Unidos Mexicanos en Washington, y

El Presidente de los Estados Unidos de América al señor Philander C. Knox, Secretario de Estado de los Estados Unidos de América

Quienes, después de haberse mostrado sus respectivos Plenos Poderes y haberlos encontrado en buena y debida forma, han convenido en los artículos siguientes:

ARTÍCULO I.

El territorio de "El Chamizal" en disputa, está situado en Ciudad Juárez, Chihuahua, y El Paso, Texas, y tiene por límites hacia el Poniente y Sur la línea media del actual cauce del río, al Este la línea media del cauce abandonado en 1901, y al Norte la línea media del cauce del Río Bravo del Norte, según fue localizado por Salazar y Emory en 1852, y que está apróximadamente fijado en el plano á una escala de 1 sobre 5000, firmado por el

[a] [This draft was handed to the Department of State informally by the Mexican Ambassador after the Embassy had telegraphed the Department's draft (enclosed in Mr. Knox' note to Señor de la Barra, June 17, 1910, U. S. Case, Appendix, p. 434 at p. 435) to Mexico City and had received instructions of the Mexican Government.—Agent's note.]

señor don Javier Osorno, Comisionado por parte de México, y por el General Anson Mills, Comisionado por parte de los Estados Unidos, el cual acompaña al informe de la Comisión Internacional de Límites, en el caso número 13, llamado "Supuesta Obstrucción en el extremo mexicano del puente del Ferrocarril de la calle de El Paso y remansos causados por el gran codo del curso inferior del río", que consta en los archivos de ambos Gobiernos.

ARTÍCULO II.

La diferencia respecto del dominio eminente sobre el territorio de "El Chamizal" se someterá de nuevo á la Comisión Internacional de Límites, la cual, sólo para estudiar y decidir la diferencia antedicha, será aumentada con un tercer Comisionado que presidirá á sus deliberaciones. Este Comisionado será un jurista canadiense escogido por ambos Gobiernos de común acuerdo, ó á falta de este acuerdo, por el Gobierno del Canadá, á quien se pedirá que lo designe. Para la perfecta validez de todas las resoluciones de la Comisión tendrá ésta que haber sido integrada precisamente por los tres miembros que la componen.

ARTÍCULO III.

La Comisión decidirá única y exclusivamente si el dominio eminente sobre el territorio de "El Chamizal" corresponde á México ó á los Estados Unidos de América. El fallo de la Comisión, ya sea que se dé unánimemente ó por mayoría de votos de los Comisionados, será final y definitivo é inapelable para ambos Gobiernos. Dicho fallo se dará por escrito, estableciendo las razones en que se funde y se pronunciará dentro de treinta días después de la Clausura de las audiencias.

ARTÍCULO IV.

Cada Gobierno tendrá derecho á estar representado ante la Comisión por un Agente y por los Asesores que estime necesario designar. El Agente tendrá derecho á presentar argumentos orales y á examinar y repreguntar testigos y también á introducir nuevos documentos de prueba en la causa, siempre que en ello convengan los Comisionados.

ARTÍCULO V.

El primero de diciembre de 1910, ó antes, cada uno de los dos Gobiernos presentará al Agente del otro, dos ó más ejemplares impresos de los alegatos y las pruebas documentales en que

funde su derecho. Será suficiente á efecto de cumplir esta prevención, que cada Gobierno entregue dichos ejemplares y sus anexos á la Embajada mexicana en Washington ó á la Embajada de los Estados Unidos de América en la ciudad de México, según el caso, para su remisión. Tan pronto como sea posible, no excediéndose de un plazo de diez días, cada parte entregará también á cada uno de los miembros de la Comisión Internacional de Límites, dos ejemplares de sus alegatos y de las pruebas documentales en que se apoye. La entrega al Comisionado mexicano y al Comisionado americano puede hacerse en las oficinas de éstos en El Paso, Texas. Los ejemplares destinados al Comisionado canadiense podrán entregarse en la Embajada británica en Washington ó en la Legación británica en la ciudad de México

El primero de febrero de 1911 ó antes de esa fecha, cada Gobierno podrá presentar al Agente del otro una réplica con las pruebas documentales en que se funde, para contestar, tanto los alegatos, cuanto las pruebas documentales de la Parte contraria. La réplica se entregará según la forma convenida en el inciso anterior.

El primero de marzo de 1911 la Comisión celebrará su primera sesión en la ciudad de El Paso, Estado de Texas, donde están situadas las oficinas de la Comisión Internacional de Límites, y procederá á juzgar del caso con toda la celeridad conveniente, teniendo para ello sus sesiones, ya sea en Ciudad Juárez, Chihuahua, ó en El Paso, Texas, según lo requieran las conveniencias. La Comisión se ajustará al procedimiento establecido en la Convención de Límites de 1889, pero estará facultada, sin embargo, para adoptar la reglamentación que estima conveniente en la secuela del caso.

En la primera sesión de los tres Comisionados, cada parte entregará, por duplicado y con los ejemplares adicionales que convengan, un alegato impreso que contendrá los fundamentos del caso y la réplica, refiriéndose á las pruebas documentales que los refuercen. Cada parte tendrá el derecho de presentar cuantos alegatos impresos suplementarios juzgue indispensables. Los alegatos suplementarios serán presentados dentro de un período de diez días, que se contará á partir de la clausura de las audiencias, á menos que la Comisión conceda un plazo más largo.

ARTÍCULO VI.

Cada Gobierno pagará los gastos que causen su representación y gestiones ante la Comisión. Todos los demás que por su

naturaleza pertenezcan á entrambos Gobiernos, inclusos los honorarios del Comisionado canadiense, los cubrirán los dos por partes iguales.

ARTÍCULO VII.

En caso de ausencia temporal ó total, por causa de fuerza mayor de alguno de los Comisionados, el que falte será substituido por el Gobierno correspondiente, si no se trata del jurista canadiense. Esté, en iguales circumstancias, será remplazado conforme á las mismas bases expresadas en esta Convención.

ARTÍCULO VIII.

Si el laudo arbitral de que se trata fuere favorable á México, su cumplimiento se llevará á efecto dentro del plazo improrrogable de tres meses que se contarán á pertir de la fecha en que aquél se pronuncie. Durante ese tiempo se mantendrá el *statu-quo* en "El Chamizal" en los términos convenidos por ambos Gobiernos. Si fuere favorable á los Estados Unidos de América, *ipso facto*, entrarán éstos en quieta y pacífica posesión del terreno disputado.

ARTÍCULO IX.

En virtud de la presente Convención, ambas Partes contratantes declaran nulas y sin ningún valor las propuestas anteriores que recíprocamente se han hecho con el mismo motivo.

ARTÍCULO X.

La presente Convención se ratificará de acuerdo con los preceptos constitucionales de cada Parte contratante y entrará en vigor desde la fecha del canje de las ratificaciones.

[Literal translation.]

ARTICLE I.

The territory of El Chamizal in dispute is situated in Ciudad Juarez, Chihuahua, and El Paso, Texas, and is bounded in the west and south by the middle line of the present channel of the Bravo del Norte River; in the east by the middle line of the channel abandoned in 1901; and on the north by the middle line of the channel of the river as it was located by Salazar and Emery in 1852, and which is approximately fixed in the plan to the scale of 1–5000, signed by Senor Don F. Javier Osorno, Commissioner of Mexico, and by General Anson Mills, Commissioner on the part

of the United States which accompanies the report of the International Boundary Commission in case No. 13, entitled "Alleged Obstruction in the Mexican End of the El Paso Street Railway Bridge and Backwaters Caused by the Great Bend in the River Below," which is of record in the archives of both governments.

ARTICLE II.

The difference over the eminent domain on the territory of El Chamizal shall be submitted anew to the International Boundary Commission, which only for the purpose of studying and deciding the aforesaid difference shall be increased by a third Commissioner who will preside over its deliberations. This Commissioner shall be a Canadian jurist selected by both governments in common accord, or failing such accord, by the government of Canada which shall be asked to designate him. For the perfect validity of all the decisions of the Commission, the Commission shall have to have been precisely made up of the three members who composed it.

ARTICLE III.

The Commission shall decide solely and exclusively whether the eminent domain over the territory of El Chamizal belongs to Mexico or to the United States of America. The award of the Commission, whether it be given unanimously or by a majority of the votes of the Commissioners, shall be final and conclusive, and without appeal for both Governments. Said award shall be given in writing, setting forth the reasons on which it is based, and shall be rendered within thirty days from the closing of the hearings.

ARTICLE IV.

Each Government shall have the right to be represented before the Commission by an Agent and by such assistance which it may deem necessary to designate. The Agent shall have the right to present oral arguments and examine and cross-examine all witnesses, and also to introduce new proofs or evidence in the case provided there be reason therefor and the Commissioners so admit.

ARTICLE V.

On the 1st of December, 1910, or before, each one of the two Governments shall present to the Agent of the other two or more printed copies of the case and documentary proof on which it

founds its right. It will be sufficient to the end of complying with this provision that each Government deliver said copy and its appendices to the Mexican Embassy in Washington or the Embassy of the United States of America in the City of Mexico, as the case may be, for its remission. As soon as be possible without exceeding a period of ten days, each party should deliver also to each one of the members of the International Boundary Commission, two printed copies of its case and the documentary proof on which it rests. The delivery to the Mexican Commissioner and the American Commissioner may be made at the offices of these at El Paso, Texas. The copies intended for the Canadian Commissioner may be delivered at the British Embassy in Washington or at the British Legation in the City of Mexico.

On the 1st of February, 1911, or before that date, each Government may present to the Agent of the other a reply with the documentary proof on which it is based to answer both the brief or the case and the documentary proof of the adverse party. The reply shall be delivered in the form provided in the foregoing paragraph.

On the 1st of March, 1911, the Commission shall hold its meeting in the City of El Paso, State of Texas, where are located the offices of the International Boundary Commission, and shall proceed to try the case with all convenient celerity, holding to that effect its session either in Ciudad Juarez, Chihuahua, or at El Paso, Texas, as required by the conveniences. The Commission shall conform to the procedure established in the Boundary Convention of 1889, but shall be empowered, however, to adopt the rules that it may find convenient in the course of the case.

At the first session of the three Commissioners each party shall deliver in duplicate, with such additional copies as may be agreed on, a printed case (alegato), which shall contain the commendations of the case, and the reply referring to the documentary proof which reinforce them. Each party shall have the right to present such additional printed briefs (alegatos) as it may deem advisable. The additional briefs shall be presented within a term of ten days counted from the close of the hearings, unless the Commission shall allow longer term.

ARTICLE VI.

Each Government shall pay the costs caused by its representation and proceedings before the Commission. All the other costs which from their nature appertain to both Governments, including the honorarium of the Canadian Commissioner, shall be paid by both in equal parts.

ARTICLE VII.

In case of the temporary or final absence for cause of vis major of any one of the Commissioners, the missing one shall be replaced by the Government concerned if it is not the Canadian jurist. The latter under like circumstances shall be replaced comformably to the same basis set forth in this Convention.

ARTICLE VIII.

If the arbitral award under consideration should be favorable to Mexico, its execution shall be carried out within the unextensible term of three months, which shall be counted from the date on which it is rendered. During that time the status quo shall be maintained in El Chamizal on the terms agreed upon by both Governments. If it should be favorable to the United States of America ipso facto, the said United States shall enter into quiet and peaceful possession of the land in dispute.

ARTICLE IX.

By virtue of the present Convention both contracting parties declare to be null and without any value the previous propositions that have reciprocally been made for the same purpose.

ARTICLE X.

The present Convention shall be ratified in accordance with the constitutional forms of the contracting parties, and shall go into effect from the date of exchange of the ratifications.

In witness whereof the Plenipotentiaries above named have signed both the Spanish and English texts of the foregoing articles with their respective seals.

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.

INSTRUCTIONS ISSUED BY THE DEPARTMENTS OF STATE AND INTERIOR TO THE U. S. COMMISSIONERS UNDER THE TREATIES OF 1848 AND 1853.

Mr. Buchanan to Mr. Weller.

DEPARTMENT OF STATE.
24th January 1849.

To JOHN B. WELLER, Esquire,

"*Commissioner for running the Boundary Line, between the United States and the Republic of Mexico, under the fifth Article of the Treaty with that Republic, concluded on the 2nd February 1848.*"

SIR: The fifth article of the Treaty requiring that the Commissioner and Surveyor of the United States and Mexico, respectively, should meet at San Diego before the 30th May 1849, no time should be lost in organizing the Commission on our part, preparatory to its departure for the place of destination. As you will be held responsible for the able and faithful Execution of the important public trust confided to you by this Article of the Treaty, the President deems it proper to leave to you the organization of the Commission, enjoining it upon you, at the same time, to employ as few persons to assist you as may be compatible with the successful and efficient performance of your duties, and to study economy, as far as practicable, in all your expenditures.

The organization will be effected solely with a view to run and mark the boundary line between the two Republics; although the selection of individuals for this purpose may be made with reference to the incidental collection of information relative to the construction of "a road canal or railway" along the River Gila, as provided for by the Sixth article of the Treaty

In organizing the Commission, you are referred for any information which you may deem necessary to Andrew B. Gray Esquire, who has been appointed Surveyor under the Treaty, and Major William H. Emory of the Topographical Engineers, whom the President has designated to be "Chief Astronomer and Head of the Topographical Scientific Corps of the Commission."

Congress by the Civil and Diplomatic Act of August 12th 1848, has appropriated: "For the expenses of running and marking the boundary line between the United States and Mexico, and paying the salaries of the officers of the Commission a sum not exceeding fifty thousand dollars": and the President considers that he will best effectuate the intentions of Congress by directing that the expenses of the Commission for one year shall be so graduated as not to exceed this appropriation. You will be charged exclusively with the disbursement of the money thus appropriated, with the exception of the sum, which may be necessary to execute my instructions of the 19th instant, to Majors Graham and Emory, relative to the delivery of astronomical instruments from the former to the latter, for the use of the Commission.

Your salary as Commissioner, as well as that of the Surveyor, will commence from this date. In case Congress should not declare by law what these salaries shall be, they will be fixed by the President before the departure of the Commission from the United States. Under the head of contingent expenses of the Commission will be embraced your reasonable personal expenses while in service and those of the Surveyor, Chief Astronomer, and the other officers of the Topographical Engineers who may be detailed to assist you in the field; the pay and subsistence of assistant surveyors, chain carriers, and laborers, and the incidental and necessary expense of exploring parties, the purchase of stationery, of tents and camp equipage, and the purchase or hire of horses, mules and vehicles for the transportation of the same.

Of all these expenses you will keep a regular account, which together with the necessary vouchers, you will render and transmit quarterly to the Fifth Auditor of the Treasury for settlement; and to meet the same as likewise the payment of the salaries, you will from time to time, as occasion may require, draw upon the Department, taking care not to exceed in the amount drawn at any time the sum which will be required to meet the actual and necessary expenses of the Commission.

After the Commission on the part of the United States shall have been properly organized under your direction, and before your departure from the country, you will receive further instructions.

I am Sir, Respectfully,

Your Obedient Servant, JAMES BUCHANAN.

Mr. Buchanan to Mr. Weller.

DEPARTMENT OF STATE,
13th February, 1849.

J. B. WELLER, Esq.,
Commissioner, &c.

SIR,

In my instructions of the 24th ulto., I promised to send you further instructions before your departure from the United States. I now proceed to perform this duty.

The fifth Article of our Treaty with Mexico, of the 2nd February 1848, as amended by the Senate, (two copies of which are herewith transmitted) clearly prescribes your duties. This Article places you in a highly responsible position, because it declares that the Boundary line between the two Republics which shall be run and marked by the Joint Commission, shall be deemed a part of the Treaty, "and shall have the same force as if it were inserted therein." The action of the Commission, therefore, will be final and conclusive; and the President has full confidence that your conduct in the discharge of your important duties will be characterised by prudence, firmness and a conciliatory spirit. Whilst he desires no advantage over the Mexican Government, you will take care that in running the boundary that all our just rights, under the Treaty, shall be maintained.

Your first duty will be to run and mark that part of the boundary consisting of a straight line, from a "point on the Coast of the Pacific Ocean, distant one marine league due South of the southernmost point of the Port of San Diego," to "the middle of the Rio Gila, where it unites with the Colorado." It is not apprehended that you will encounter much difficulty in determining either of these points.

This Southernmost point of the Port of San Diego is to be ascertained by the Treaty, "according to the plan of said Port made in the year 1782 by Don Juan Pantoja, Second Sailing Master of the Spanish Fleet, and published at Madrid, in the year 1802, on the Atlas to the Voyage of the Schooners, *Sutel* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective Plenipotentiaries." You are furnished with a certified copy of this Plan, which appears to fix precisely what is the Southern limit of the Port of San Diego; and a point on the Pacific "one marine league due South" of this, is the place of beginning. The middle of the Rio Gila, where it unites with the Colorado, being a natural object, there can be but little difficulty in ascertaining this point.

The duties of the Surveyor are sufficiently indicated by the Treaty itself; those of Major William H. Emory, the Chief Astronomer, will be to determine all astronomical points, and to direct the mode of running all astronomical lines on the Boundary; Lieutenant A. W. Whipple and Brevet Captain E. L. F. Hardcastle of the Corps of Topographical Engineers have been designated under the authority of the President, to accompany Major Emory as his assistants.

The remainder of the boundary runs along the middle of the Rio Gila and the Rio Grande, with the exception of that portion of it between "the point where the Rio Grande, strikes the Southern boundary of New Mexico; thence westwardly, along the whole Southern boundary of New Mexico (which runs north of the Town called Paso) to its western termination; thence northward, along the Western line of New Mexico until it intersects the first branch of the River Gila, (or if it should not intersect any branch of that River, then to the point on the said line nearest to such branch, and thence in a direct line to the same")

In regard to this latter portion of the line it is impossible to give you specific instructions for the want of accurate geographical information. It can only be ascertained by examinations and Surveys upon the ground. Besides the Treaty itself declares that the Southern and Western limits of New Mexico, mentioned in this article are those laid down in the Map of the United Mexican States; published at New York, in 1847, by I. Disturnell, of which a copy was added to the Treaty bearing the signatures and seals of the Plenipotentiaries. You are now furnished with a certified copy of this Map.

You are also furnished, as bearing upon this subject, with the copy of a Map of New Mexico which was attached to the Atlas to Thompsons edition of the Geographical and Historical Dictionary of America and the West Indies by Col. Don Antonio de Alcedo published at London in 1812—a work of the highest authority.

My successor in office will most probably obtain further information in regard to this portion of the line; and as the work progresses will doubtless deem it proper to give you further instructions. I deem it unnecessary, therefore, to say more at present upon the subject.

I need scarcely add that the President expects you will perform your duties under the Treaty with as little delay as practicable consistently with accuracy.

As it is indispensible that each Government should be furnished with a full and circumstantial record of the proceedings of the Commissioners, they will doubtless order such record to be kept in duplicate. This duty will naturally devolve upon the clerks appointed on both sides, under the supervision of the respective Commissioners, who will be responsible for the accuracy of such records and for their safe delivery properly certified to the respective Governments, at the expiration of the Commission.

You will with that view, provide the clerk appointed on the part of the United States, with suitable instructions respecting this and any other duty which it shall be deemed proper to assign to him.

As soon as the boundary shall have been ascertained and marked, you will cause a true and accurate map to be made of the Country through which it passes, in its entire extent and a duplicate copy of said map certified by the Commissioners and Surveyors on both sides, will accompany the records of the proceedings of the Commission. The joint report or declaration by the Commissioners, of "the final result agreed upon by them" under the fifth Article of the Treaty, will also be transmitted to the department to be filed with the Journal or record of their proceedings and the Map.

As soon as the Commission shall be organized, you will transmit to this Department a list containing the names of the several persons composing it, the nature of the duties assigned to each individual, and the compensation allowed to them respectively: And, will, also, from time to time, inform the Secretary of State of any change, which you may, by circumstances, be induced to make in its organization.

The sixth article of the Treaty provides that "If by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal or railway, which should in whole or in part run upon the river Gila, or upon its right or its left Bank, within the space of one marine league from either margin of the River, the Governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries."

Although you are not required to make the examinations referred to in this article under the appropriation made by Congress on the 12th August last which is limited to "the expenses of running and marking the boundary line;" yet the President would be gratified if you could cause these examinations to be made,

incidentally, without seriously interfering with your appropriate duties. The enquiry is one of great importance to the Country; and any information which you can communicate to the department on the subject, will be highly appreciated by our fellow citizens.

Major Emory has received from Major Graham under my instructions all the instruments belonging to the Department which he believed to be suitable for running the Boundary line between the two Republics. In a report which he made to the Department dated at New York on the 4th instant, he states that these are not sufficient; and furnishes a list of those which will be required. Several of the latter he deems it indispensable that he should carry with him: to wit,

1 Box chronometer (No. 4069)	$285. 00
1 Hebotrope	100. 00
1 Reconnoitering glass	50. 00
1 Portable astronomical telescope	190. 00
4 Nautical Almanacs, 1849	10. 00
1 Copy catalogue Stars B Association	20. 00
1 Set of charts, Coast of California	2. 00
1 Daniels hygrometer	15. 00
4 Hassler's logarithms at $1	4. 00
6 Thermometers at $4	24. 00
6 Observing lamps	15. 00
4 Cases drawing instruments at $10	40. 00
4 Bottles ether (sulphuric)	
½ Bushel of Plaster of Paris	
2 Observing Tents at $40	80. 00
1 Equatorial Stand, price estimated at	100. 00

In your absence, the President has not hesitated to advise him to purchase these instruments, not doubting that you would promptly pay for them out of the appropriation, as it will be impossible for him to reach New Orleans before the 28th instant; you will not take your departure thence until after his arrival.

The president has determined that your salary shall be at the rate of $ per annum, and that of the Surveyor at the rate $ per annum; but should Congress before its adjournment fix your salaries at different rates, this will be the guide in settling your accounts from the beginning.

The Military Escort on the part of the United States, to accompany the Commission, has been placed by the President under the direction of the Secretary of War.

I am, Sir,

Very respectfully,

Your Obdt. Servant,

JAMES BUCHANAN

Mr. Clayton to Mr. Fremont

DEPARTMENT OF STATE,
26th June 1849.

SIR.

The President having thought proper to appoint you the Commissioner on the part of the United States for running and marking the Boundary line under the Fifth Article of the Treaty of Guadalupe Hidalgo, I transmit your commision in that character. You will also receive herewith a copy of the Several instructions, which this Department has addressed to your predecessor. It is not considered that you will need any further instructions at this time. I would however invite your special attention to the necessity of the regular transmission of your accounts and vouchers for Settlement at the Treasury Department as those instructions require. Any drafts, also, which you may have occasion to draw on account of the expenses of the Commission, must be addressed to the Secretary of State and not to the Secretary of the Treasury. You will also forward to this Department a full list of the persons (other than Military or Naval) in the service of the Commission on our part with the rates of compensation allowed to each, and will apprize the Department of any changes therein which may from time to time take place.

Your compensation as well as that of your predecessor, will be settled by Congress at their next session.

I am Sir
Respectfully
Your Obdt Servt

JNO. M. CLAYTON.

J. C. FREMONT Esq.
San Francisco
California.

Mr. Goddard to Mr. Bartlett.

DEPARTMENT OF THE INTERIOR,
August 1, 1850.

SIR:

In a letter from the Department, bearing date of June 19, 1850, you were informed that you had been appointed Commissioner on the part of the United States for running and marking the boundary line between the United States and the Republic of Mexico, under the fifth article of the treaty of Guadalupe Hidalgo.

By the documents in this department, copies of which have been placed in your possession, or to which you have had access, you will perceive that that portion of the boundary between the junction of the Gila with the Colorado and the Pacific Ocean has already been run by your predecessor. By the same documents it also appears that the Joint Commission in February last mutually agreed to suspend their operations, and meet on the first day of November next, at El Paso, on the Rio Grande, and resume their operations westward from that point.

You will, therefore, in conformity with that agreement, proceed, with the Commission appointed to perform the duties of running the boundary mentioned, to El Paso, by the nearest and most convenient route, so as to reach there by the first of November.

As the organization of the Commission on the part of the United States has been made with a view to other objects beyond that of running the boundary, it becomes necessary to call your attention to the duties required.

By the Sixth Article of the treaty of Guadalupe Hidalgo, provision is made for the collection of information relative to the construction of a "road, canal, or railway, which shall, in whole or in part, run upon the river Gila, or upon its right or left bank, within the space of a marine league from either margin of that river." And that, "should it be found practicable and advantageous to construct such a road, the governments of both republics will form an agreement regarding its construction in order that it may serve equally for the use and advantage of both countries."

As the examinations to be made, and the information to be collected, agreeably to this Article, are of very great importance, you will make such an organization of parties, and assign to them such duties, as will be productive of the desired result.

The boundary line where you will commence your labors begins at the "point where the Rio Grande strikes the southern boundary of New Mexico; then westwardly along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence northward, along the western line of New Mexico, until it intersects the first branch of the river Gila (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch and then in a direct line to the same.")

This portion of the line can only be ascertained by examinations and surveys upon the ground. You will however, receive impor-

tant aid in the determination of this line, as the treaty expressly declares that the "southern and western limits of New Mexico, mentioned in this article, are those laid down on the map of the United Mexican States, published at New York in 1847, by J. Disturnell," a certified copy of which was appended to the treaty, bearing the signatures and seals of the Plenipotentiaries. You are furnished with a certified copy of this map.

The remainder of the Boundary runs along the middle of the river Gila and the Rio Grande; of the former from the point where the Western line of New Mexico, intersects it, to its junction with the Colorado; and the latter, from the point intersected by the southern line of New Mexico, near El Paso, to its mouth.

As the organization of the Commission under your charge has been made for the purpose of collecting information relative to the country contiguous to the boundary line, in addition to the running of that line, it is desirable that you should avail yourself of every opportunity afforded by your passage through the unexplored regions of Texas, New Mexico and California, to acquire information as to its geography, natural history, etc., when it can be obtained without retarding the progress of the boundary survey.

You are therefore at liberty to send out exploring parties when not otherwise employed on the survey of the line, to examine the country north of the Gila, as well as on either side of the Rio Grande for the above and kindred purposes.

It is stated on the authority of persons who have traversed the country near the river Gila, that during a considerable portion of the summer, there is neither grass nor water to be obtained. Should the Commission be in this region at this season, it may be compelled to suspend its operations. In such an event, your party may be usefully employed in geographical and scientific explorations in the regions before alluded to.

The collection of information relative to the precious metals, quicksilver, and the various minerals, ores, and other substances, useful in the arts, is very desirable. In reference to the existence and localities of these, as well as the locations of mines formerly worked by the early settlers in California and New Mexico and since abandoned, owing to the incursions of the Indians or other causes, you will do all in your power to acquire information as far as you may be able, without impeding the main objects of the Commission.

After you have traced the boundary to the junction of the Gila with the Colorado, you will be compelled to retrace your steps to El Paso. Before doing this, as you will possess many facilities for the purpose, you are at liberty to proceed up the Colorado river, and make such explorations as your time and facilities will permit, provided the boundary survey is not arrested in so doing.

The discovery of more practicable routes through California for emigrants, is desirable. The present routes, by way of the Great Salt Lake, and the River Gila, are attended with many difficulties. If a portion of the Commission can be spared; with an adequate escort, to seek such routes, while it is in their vicinity, you are at liberty to employ them.

As it is indispensable that each Government should be furnished with a full and circumstantial record of the proceedings of the Commissioners, they will doubtless order such to be kept in duplicate. This duty will devolve upon the clerks or secretaries appointed on both sides, who will be responsible for the accuracy of such records, and, for their safe delivery, properly certified, to the respective Governments, at the expiration of the Commission.

As soon as the boundary shall have been ascertained and marked, you will cause a true and accurate map to be made of the country through which it passes, in its entire extent. A duplicate copy of said map, certified by the Commissioners and Surveyors on both sides should accompany the records of the proceedings of the Commission.

The joint report of declaration by the Commissioners "of the final result agreed upon by them," under the fifth article of the Treaty, will also be transmitted to the Department, to be filed with the journal or record of their proceedings, and the map.

Your salary as Commissioner, which has been fixed by Congress at three thousand dollars, will commence on the fourteenth day of June 1850, the day of your appointment by the President, when you were ordered to report yourself for duty to this Department. Under the head of contingent expenses of the Commission, will be embraced your reasonable personal and travelling expenses while in service, and those of the principal surveyor, chief astronomer, and other officers of the Topographical Engineers and Navy, who may be detailed to assist you in the field or otherwise, the pay and subsistence of assistant surveyors and draughtsmen, chain-carriers, mechanics, laborers, cooks, servants, and guides,

and the incidental and necessary expenses of exploring parties, the pay and subsistence of secretaries, surgeon, quarter-master, commissary, assistants, and clerks. The purchase of an outfit, including horses, mules, tents, and camp equipage, arms and ammunition, books and stationery, instruments, medical stores, boats, mechanics' tools, wagons, and vehicles for the transportation of the Commission, and its stores by sea or otherwise, the purchase of articles for presents to, or traffic with the Indians; clothing for the men, (to be repaid by them) the purchase and fixing of monuments to mark the boundary line.

Of all these expenses you will keep a regular account which, together with the necessary vouchers, you will render and transmit quarterly to the Fifth Auditor of the Treasury, for settlement. And to meet the same, as likewise the payment of the salaries, you will from time to time, as occasion may require, draw upon the Department, taking care not to exceed in the amount drawn at any one time, the sum which will be required to meet the necessary and actual expenses of the Commission. You will be charged exclusively with the disbursement of the money appropriated to pay the expense of the Commission.

As soon as the Commission is filled, you will transmit to this Department a list containing the names of the several persons composing it, the nature of the duties assigned to each individual, and the compensation allowed to them respectively, and will also, from time to time inform the Secretary of the Interior of any change which you may by circumstances, be induced to make in its organization.

In organizing for duty, you are referred, for any information which you may deem necessary, to Andrew B. Gray, Esq. who has been appointed Surveyor under the treaty, and to Brevet Lieut. Colonel John McClellan, of the Topographical Engineers, whom the President has designated as "Chief Astronomer and head of the Topographical Scientific corps of the Commission."

Very respectfully, your obedient servant,

D. C. GODDARD,
Secretary ad Interim.

JOHN R. BARTLETT, Esq.,
Commissioner on the part of the United States, to run and mark the Boundary between the United States and Mexico.

Mr. McClelland to Mr. Campbell.

DEPARTMENT OF THE INTERIOR,
Washington, March 19, 1853.

SIR,

The President, by and with the advice and consent of the Senate, having appointed you Commissioner for running the boundary line between the United States and the Republic of Mexico, under the fifth article of the treaty with that Republic concluded on the 2° February, 1848, I herewith enclose your Commission. Be pleased to acknowledge its receipt and, should it be accepted, of the State or Country in which you were born.

Enclosed is the form of the oath of office required, which when taken you will please file in this Department.

I am, Sir, very respectfully, Yr. Obt. Sevt.,

R. MCCLELLAND, *Secretary.*

ROBT. B. CAMPBELL,
Present.

Mr. McClelland to Maj. Emory.

DEPARTMENT OF THE INTERIOR,
Washington, Augyst 16, 1854.

To Brevet Maj. WM. H. EMORY,
Corps Topographical Engineers,
U. S. Army.

The President of the United States, by and with the advice and consent of the Senate, has appointed you the Commissioner on the part of the United States, to survey and mark out upon the land, the dividing line between the United States and the Republic of Mexico, as stipulated in the first article of the Treaty, concluded on the 30th of December 1853, the ratifications of which were exchanged at the City of Washington, on the 30th day of June last.

Enclosed is your commission, and a printed copy of the above mentioned Treaty, as published by the Department of State.

You will with as little delay as possible, proceed to organize the commission, and prepare a suitable outfit to enable you to comply with your duties as prescribed in the Treaty, and after having done so, you will proceed with all possible dispatch to the Town of El Paso, where by the terms of the Treaty, you are required to meet the Mexican Commissioner, by the 1st of October next.

You will then proceed with him to "survey and mark out upon the land the unsurveyed portion of the dividing line" stipulated by the first article of said Treaty, commencing on the Rio Grande at the point where the parallel of thirty one degrees forty-seven minutes (31° 47′) north latitude, intersects that river.

You are required to keep a journal and cause proper plans to be prepared, showing your operations. For these purposes you are authorized to employ such assistant astronomers and surveyors as may be deemed necessary and proper, and to purchase the necessary Instruments, camp equipage, subsistence, wagons, animals, and other means of transportation; also to employ one surgeon, and the requisite number of mechanics, laborers and teamsters.

As the Treaty seems to contemplate it, you will be expected to perform the duties of Chief Astronomer and Surveyor, as well as those of Commissioner.

In all cases where they may not conflict with the stipulations of the Treaty, or the specific directions contained in these instructions, you will be guided by the instructions issued by the Department of State, and those of this Department to the Commissioner for running and marking the boundary line under the Treaty of Guadalupe Hidalgo.

It may much advance the operations of surveying the line to send a party direct to California, to commence the line at the point designated in the Treaty, which is on the Rio Colorado, twenty miles below (or south of) the junction of that river with the Gila, with directions to run the line until it meets the principal party, operating from El Paso, westwardly, and should no objection exist on the part of the Mexican Commissioner, you are authorized to do so. In that case you will turn over to the officer you may select for the purpose, such sum of money as may be deemed necessary to effect that object. He will account through you to this Department, for the proper expenditure of the same.

The amount appropriated by Congress to run the line between the Rio Grande and Colorado rivers is one hundred and sixty-eight thousand, one hundred and thirty dollars. Of this sum, one hundred and thirty-eight thousand will be placed to your credit with the Assistant Treasurer of the United States, at the City of New York, on whom you are authorized to draw from time to time for such sums as you may need, keeping the Department advised, however, of the dates, numbers and amounts of those drafts,

respectively, and to whom and for what purpose given &c. The residue, viz: Thirty Thousand one hundred and thirty dollars will be in like manner deposited to the credit of the officer you may put in charge of the operations on the Pacific side. He will account to this Department through you, for the expenditure of this money and in drawing for the same, will act in accordance with the foregoing instructions to yourself on that subject.

You will make your accounts quarterly, and in duplicate, one set you will carefully preserve, and forward the other to this Department by the earliest and safest opportunity which may occur after the expiration of each quarter.

It is known that after leaving the Rio Grande there is no communication with any part of the line west of it by mail, but it is nevertheless desirable that you should avail yourself of every suitable occasion to send these returns, and also to keep the Department advised of your progress and operations.

You will leave the office work of the old survey in charge of Capt. Geo. Thom, whom you will require to make estimates to be approved by you for the continuance of the same, and the requisite engraving for one year.

Upon these estimates you will make requisition upon the appropriation for "continuing the office work", and for "engraving the maps, views and illustrations" and turn the same over to him, taking his receipt therefor. The accounts of Capt. Thom, as well as those of the officer who may be sent in charge of the surveying party to California must be approved and certified by you before being rendered to the accounting officers of the Treasury.

When you shall have reached Texas, and completely organized the commission, you are requested to forward a list of the officers and employees, showing the date of their appointment, amount of compensation, and duty assigned them respectively, and inform the Department from time to time as changes may be made. The officer in charge of the Pacific party will do likewise.

Your compensation as Commissioner will be at the rate of $3,000 per annum, exclusive of your necessary personal expenses, which may be commuted, at the rates established by my predecessor's decision of the 15th of August 1852, viz: $4 per diem from the date of the Commission, $8 per diem while in actual service on the line, and $3 per diem after leaving the line on the return home until discharged from duty on the Commission.

The officer in charge of the Colorado survey, and the Secretary to the Commission will be allowed a commutation of personal

expenses at the rate of $4 per day each, while in actual service in the field, and the assistant astronomer, the two assistant surveyors, and the assistant in charge of the Barometric observations, and the assistant in charge of Reconnoisance, and the surgeon, each a commutation at the rate of $2 per diem, while in the field, for subsistence and which will be in lieu of all allowances whatsoever, except actual traveling expenses to and from the field. All other assistants will be allowed one ration per day, and their actual travelling expenses.

The officer in charge of the office work of the old survey will be allowed a commutation of $2 per diem, while he may be engaged in that capacity.

I am Sir, Very Respectfully,

Your Obt. Servant, R. McCLELLAND,
Secretary.

JOINT JOURNALS OF COMMISSIONERS EMORY AND SALAZAR NOT PRINTED IN THE APPENDIX TO THE MEXICAN CASE.

[Joint Journal]

WASHINGTON CITY, *June 24, 1856.*

In pursuance of previous adjournment, the two Commissioners met this day at the office of the Joint Commission. Mr. Salazar stated, that after he separated from Señor Emory on the 20th August 1855, he reviewed with his parties the different lines of the boundary, that is to say, the parallel 31° 47′ the Meridian, and the parallel 31° 20′, on which lines the Mexican Commission executed the following work.

From the point south of El Carrizalillo, on which was erected a Monument, he observed minutely on Polaris to determine the prime Vertical on both sides east and west. The prime Vertical and the parallel 31° 47′ were connected by a triangulation; on the east side with that which had been made at the Initial Point, and on the west side with the intersection of Meridian; by this triangulation *five* points to the east were fixed at which points he caused to be erected Monuments of Stone with Mortar, because he found not one established by the U. S. Commission in said direction.

The Monument at the road was re-constructed of Stone with Mortar. Upon all of them was inscribed the abridged inscriptions agreed upon. This line was then marked with *ten* Monuments. That at the west end he caused to be erected of dressed Stone with mortar, and inscribed with the complete inscription

agreed upon, similar to that which was erected at the Initial Point on the Rio Bravo.

Mr. Salazar stated, that he observed at the south end of the Meridian, for latitutde and longitude, his results differing very little from those of the U. S. Commission; that from this point was carried north a triangulation, which was connected at the North end with that made on the parallel 31° 47′, and was used to determine the position of said end on the parallel and on the Meridian; that these two extreme points were left where the U. S. Commission established them: that having found no Monument between them, he caused one to be erected, intermediate, in sight of ojo de los Mosquitos, of dressed Stone laid in Mortar, with the usual inscriptions. That the Monument at the south end was erected of dressed stone and mortar, with inscriptions similar in all respects to those at the North end and at the Initial Point. On the parallel 31° 20′, besides the observations he made at the intersection, he observed for Latitude at San Luis Springs, at San Bernardino and San Pedro river; he found Monuments at the two first named points, but none at the last: that his observations proved that the points were on the parallel 31° 20′ and he caused monuments to be erected at these points with mortar, having the usual inscriptions upon them, and that he thought it proper a Monument of the same kind in Guadalupe pass.

Mr. Emory stated his entire satisfaction with what had been done by Mr. Salazar, and gave his assent thereto, except with regard to the Monument at San Pedro river. He desired to call in Mr. Weyss who was with Mr. von Hippel when the Monument was erected on the San Pedro. His own recollection was that a very substantial Monument had been erected at the San Pedro by the U. S. Commission.

Mr. Weyss was brought before the Commissioners and stated that a Monument of dressed Stone with the usual inscription was erected on the parallel 31° 20′, 3.825 feet west of the San Pedro river. The Maps and Views were exhibited shewing the exact locality of this Monument.

Mr. Emory stated, if the Indians had destroyed that Monument it was all very well, but if it was still standing there may be some discrepancy amounting may be to 100 feet, between the latitude of the Monument erected by Mr. Salazar, and that erected under his orders. If so it may hereafter when the Country was settled produce confusion.

Mr. Salazar stated that in case both existed, he would take the Monument erected by Mr. von Hippel as the true Boundary. Assented to by Major Emory.

The Commission then adjourned to meet at 9^h 30^m to-morrow morning.

JOSÉ SALAZAR YLARREGUI,
Com° Mex°.

W. H. EMORY,
U. S. Comr.

[Acta]

CIUDAD DE WASHINGTON, *Junio 24 de 1856.*

Conforme á cita prévia, los dos comisionados se reunieron hoy en la oficina de la comision unida. El Señor Salazar espuso, que despues de haberse separado del Señor Emory el 20 de Agosto de 1855, examinó con sus secciones las diferentes lineas de los limites, es decir, el paralélo 31° 47′ el meridiano y el paralélo 31° 20′ en cuyas lineas la comision Mexicana ejecutó el trabajo siguiente.

Desde el punto al sur del Carrizalillo en el cual estaba elevado un monumento, observó cuidadosamente la Polar para determinar el primer vertical á uno y otro lado, este y oeste. El primer vertical y el paralélo 31° 47′ se encadenaron con una triangulacion; al este hasta lo que se hizo en el Punto Inicial, y al Oeste hasta la interseccion del meridiano, por cuya triangulacion se fijaron cuatro puntos al este en las que se hizo construir monumentos de piedra y mezcla por que ninguno encontró establecido por la comision de los E. E. U. U. en esa direccion.

El monumento del camino se reconstruyó con piedra y mezcla. En todos ellos se inscribieron las inscripciones abreviadas convenidas. Esta linea quedó pues marcada con nueve monumentos. Hizo que el del estremo oeste se construyera de piedra labrada y mezcla, é inscrito con las inscripciones completas convenidas, semejante al que se construyó en el Punto Inicial en el Rio Bravo.

El Señor Salazar espúso que en el estremo sur del meridiano hizo observaciones de latitud y longitud, cuyas resultados difiriéron muy poco de los de la comision de los E. E. U. U. que desde este punto se llevó al norte una triangulacion que se enlazó en el estremo norte con la hecha en el paralélo 31° 47′ y que se usó para determinar la posicion de dicho estremo en el paralélo, y en el meridiano; que los dos estremos se dejaron donde los estableció la comision de los E. E. U. U. que no habiendo hallado monumento entre ellos, hizo construir uno intermedio á la vista del Ojo de los

Mosquitos, de piedra y mezcla con las inscripciones usadas. Que el monumento del estremo sur se construyó de piedra labrada y mezcla con las inscripciones semejante en todo á los del estremo Norte, y del Punto Inicial. En el paralélo 31° 20′ además de las observaciones que hizo en la intersección, hizo de latitud en los Ojos de S^{n} Luis, en S^{n} Bernardino, y en el rio de S^{n} Pedro; encontró monumentos en los dos primeros puntos pero ninguno en el último; que sus observaciones le probaron que los puntos estaban en el paralélo 31° 20′ y que hizo construir monumentos con mezcla en estos puntos llevando las inscripciones usadas, y que creyó conveniente construir un monum^{to} de la misma clase en el Paso de Guadalupe.

El Señor Emory manifestó su completa satisfaccion á lo que había hecho el Señor Salazar y lo aprobó escepto en lo relativo al monumento del rio de S^{n} Pedro. Hizo llamar al Señor Weyss que estaba con el Señor Von Hippel—cuando el monumento se construyó en el S^{n} Pedro. Su recuerdo particular era que realmente se había construido un monumento en el S^{n} Pedro por la comision de los E. E. U. U.

El Señor Weyss se presentó ante los comisionados y espuso que un monumento de piedra labrada con la inscripcion aconstumbrada se construyó en el paralélo 31° 20′, 3825 pies al Oeste del rio de S^{n} Pedro. Se presentaron los planos y vistas en q^{e} se manifestó la localidad esacta de este monum^{to}.

El Señor Emory manifestó que si los indios habian destruido ese monum^{to}, todo estaba muy bien pero que si aún existía podia haber alguna diferencia tal vez de 100 pies, entre la latitud del monumento construido por el Señor Salazar, y el construido por sus ordenes. Si asi era, en lo sucesivo, cuando el pais esté poblado, podia producir confusion.

El Señor Salazar contestó que en caso de que los dos existan, consideraría el monum^{to} construido por el Señor Von Hippel como el verdadéro límite. Aprobado por el Señor Emory.

La comision se citó entonces p^{a} reunirse mañana á las 9^{h}30′ en la mañana.

JOSÉ SALAZAR YLARREGUI
Com^{o}. Mex^{o}.

W. H. EMORY,
U. S. Com^{r}.

[Joint Journal]

WASHINGTON CITY, D. C., *September 21, 1857.*

The joint commission met in pursuance of agreement, and Señor Salazar stated that his Maps were finished and ready for signature.

Major Emory, stated that his were also ready and the two Commissioners having previously examined and compared these Maps, and found them to agree in all essential matters appertaining to the Boundary proceeded to sign them. So that the Maps signed to-day, and those signed July 3d 1857, complete the whole series from the mouth of the Rio Bravo, to the Pacific Ocean.

The Commissioners think it proper to state that in many details along the Rio Bravo, in Topography, and in Latitude and Longitude, there are small differences, the legitimate result of scientific operations performed under difficult circumstances. These differences are explained by notes on the Maps, but they in no way affect the Boundary Line.

The Commission adjourned to meet on the 30th September, at 9 o'clock a. m.

W. H. EMORY,
U. S. Comr.

JOSÉ SALAZAR YLARREGUI,
Com°. Mex°.

[Acta]

CIUDAD DE WASHINGTON, D. C.,
Setiembre 21, 1857.

La comision mixta se reunió conforme a lo convenido y el Senor Salazar espuso que sus mapas estaban concluidos y listos para firmarse

El Mayor Emory manifestó que los suyos estaban tambien listos, y los dos comisionados, habiendo examinado y comparado previamente los mapas y encontrado que convenian en todo lo esencial perteneciente a los limites, procedieron á firmarlos. Asi es que los mapas firmados hoy y los firmados el 3 de Julio de 1857 completan toda la serie desde la desembocadura del Rio Bravo hasta el Oceano Pacifico.

Los comisionados creen oportuno manifestar que en muchos detalles a lo largo del Rio Bravo existen leves diferencias en topografia y en latitud y en longitud, resultado preciso en operaciones cientificas practicadas en sircumstancias dificiles. Estas diferencias van esprasadas por notas en los mapas; pero de ninguna manera afectan la línea divisoria.

La Comision se cito para reunirse el 30 de Setiembre á los nueve.

JOSÉ SALAZAR YLARREGUI
Com° Mex°.

W. H. EMORY
U. S. Com^r.

[Joint Journal]

WASHINGTON CITY, D. C., *September 30, 1857.*

The joint Commission met on the 30th September and all the views along the line having been examined and found correct were duly signed.

The Commissioners believe that all has now been accomplished which is required of them by the treaty of December 30th 1853, and there being no further business before the Commission, it adjourned sine die.

W. H. EMORY,
U. S. Comr.

JOSÉ SALAZAR YLARREGUI,
Com°. Mex°.

[Acta]

CIUDAD DE WASHINGTON,
Setiembre 30 de 1857.

La comision mixta se reunio el 30 de Setiembre y habiendo examinado y encontrado correctas los vistus a la largo de la linea las firmo.

Los comisionados creen que han complido con cuanto les impuso el tratado de Diciembre 30 de 1853, y no teniendo la comision mas negocios de que tratar se cito sine die.

JOSÉ SALAZAR YLARREGUI
Com°. Mex°.

W. H. EMORY
U. S. Comr.

CORRESPONDENCE AND JOINT JOURNALS OF THE INTERNATIONAL BOUNDARY COMMISSION RELATING TO THE CORDOBA CUT-OFF.

[Joint Journal.]

WASHINGTON, D. C., *December 4, 1901.*

The Joint Commission met at the office of the United States Commissioner at 10 o'clock A. M.

The Mexican Commissioner stated that on several occasions he was asked in El Paso, Texas, by the authorities of the city, and others, as to the national jurisdiction of the land cut off below El Paso by the cut-off, described in the Joint Journal of April 29, 1898, of this Commission, and approved by the two Governments, part of which is as follows:

"it was not understood that the accomplishment of the cut-off would in any way interfere with the * * * national jurisdiction of the land to be cut off from each nation by the opening of this cut-off,"

and to make the national jurisdiction perfectly clear and apparent to all the citizens in the vicinity that the usual monument used to designate the national boundary be placed in the old bed of the river, and that the Engineers be instructed to accomplish this as soon as practicable.

To which the United States Commissioner replied that he wholly coincided with the Mexican Commissioner on this point

and agreed that the work should be done at as early a date as practicable in order that there might be no questions raised in the matter hereafter.

ANSON MILLS. JACOBO BLANCO.
W. W. KEBLINGER. A. LONGORIA.

[Acta.]

WÁSHINGTON, D. C., *Diciembre 4 de 1901.*

La Comisión Mixta se reunió en la oficina del Comisionado de los Estados Unidos á las 10 A. M.

El Comisionado mexicano manifestó que en varias ocasiones había sido interrogado en El Paso, Texas, por las autoridades locales y otras personas, acerca de la jurisdicción nacional del terreno separado, abajo de El Paso, por el corte descrito en el acta unida de esta Comisión del 29 de Abril de 1898, aprobada por los dos Gobiernos, parte de la cual es como sigue:

"con tal que de esta aprobación no se pudiera inferir, que la apertura del corte afecta en manera alguna * * * la jurisdicción nacional con motivo de la apertura de este canal."

Y que con objeto de hacer perfectamente clara y aparente la jurisdicción nacional á todos los habitantes de la localidad, se coloquen los monumentos acostumbrados, para designar el límite nacional, en el antiguo lecho del río, y que se den instrucciones á los ingenieros para llevar á cabo este trabajo tan pronto como sea posible.

Á lo que el Comisionado de los Estados Unidos contestó, que estaba completamente de acuerdo con el Comisionado Mexicano sobre este punto, y de conformidad en que el trabajo debía ejecutarse tan pronto como fuera posible, á fin de evitar cuestiones, en lo futuro, sobre este particular.

JACOBO BLANCO. ANSON MILLS.
A. LONGORIA. W. W. KEBLINGER.

The International Boundary Commissioners to the Joint Engineers.

Washington, D. C., December 4, 1901.

The JOINT ENGINEERS,
International Boundary Commission,
United States and Mexico.

GENTLEMEN:

You will please find enclosed herewith [a] copy of our Joint Journal of this date in regard to the land separated by the Cut-off below El Paso, Texas, and in accordance therewith we request you at as

[a] [For inclosure see supra p. 64.—Agent's note.]

early a date as possible to secure from the El Paso Foundary the usual monuments and place them in the most conspicuous and effective points to designate clearly to the citizens of both nations the national boundary in the bed of the old river, the channel of which was changed by the accomplishment of the Cut-off.

It is suggested that near the point of departure of the cut-off along the old bed of the river two monuments, a short distance from the point of departure, be placed, so that a right line drawn through them will intersect the point of departure in the middle of the cut-off and old bed of the river, so that should the river move from this point a prolongation of the line through these two monuments will determine the departure of the boundary from the river's channel, and that as many more monuments be placed along the old bed of the river as may in your judgment be deemed necessary. The return of the cut-off to the bed of the river to be marked in the same way, and if deemed necessary by the Engineers the second return to the bed of the river farther down may be likewise marked.

In order to entail no unusual expense in this matter we request that you consult together and furnish us with a diagram, having reference to the map in the Chamizal Case contained in the Incomplete Proceedings of the report of the U. S. Commissioner, on page 147, showing where in your opinion the monuments should be placed and the number.

Very respectfully,

ANSON MILLS JACOBO BLANCO.

Señor Blanco to General Mills.

NEW YORK, *December 27th., 1901.*

Brigadier General ANSON MILLS, U. S. A.,
United States Commissioner, Washington, D. C.

DEAR SIR:

I received yesterday from Mr. Zayas the Joint Report and diagram showing location of monuments as projected in the old bed of the river near the cut-off at El Paso.

I am ready to approve the proposition of the Engineers as expressed in their Report and if you are of the same opinion kindly telegraph to me and to them as they request, and I will telegraph to them also as soon as I hear from you accordingly.

In communication received yesterday from the Department of Foreign Relations in Mexico, Mr. Mariscal has approved our journal of the 4th instant.

You will please find enclosed copy of the Report and sketch mentioned above.

I remain yours respectfully,

JACOBO BLANCO,
Commissioner.

General Mills to Señor Blanco.

DEPARTMENT OF STATE,
INTERNATIONAL (WATER) BOUNDARY COMMISSION,
UNITED STATES AND MEXICO,
NO. 2 DUPONT CIRCLE,
Washington, D. C., December 28, 1901.

Mr. JACOBO BLANCO,
Mexican Boundary Commissioner,
No. 35 Broadway, New York.

DEAR SIR:

Your letter enclosing sketch of old river bed abandoned by reason of the cut-off, and dated Dec. 27th, is received, and I beg to return herewith your tracing sent me and also a blue print of the same sent me by Mr. Dillard and request that you approve same as I have done, on both copies, and return me the blue print, keeping the tracing as approved for your file.

This sketch seems entirely satisfactory and as I wired you today I have notified Mr. Dillard by wire of my approval and presume you have likewise notified Mr. Zayas.

Yours very truly, ANSON MILLS,
U. S. Commissioner.

General Mills to Mr. Dillard.

DEPARTMENT OF STATE
INTERNATIONAL (WATER) BOUNDARY COMMISSION
UNITED STATES AND MEXICO.
Washington, D. C., December 28, 1901.

J. D. DILLARD,
Acting Consulting Engineer,
El Paso, Texas.

Sketch showing monuments at cut off received and approved.

ANSON MILLS, *Commissioner.*

O. B.—Govt.

General Mills to Señor Blanco.

DEPARTMENT OF STATE
INTERNATIONAL (WATER) BOUNDARY COMMISSION
UNITED STATES AND MEXICO.
December 28, 1901.

JACOBO BLANCO,
Mexican Boundary Commissioner,
Room ninety-nine, Thirty-five Broadway, New York.

Report and sketch of engineers approved and have so telegraphed Mr. Dillard.

ANSON MILLS, *Commissioner.*

O. B.—Govt.

Señor Blanco to General Mills.

NEW YORK, *December 30th, 1901.*

Brigadier General ANSON MILLS, U. S. A.,
United States Boundary Commissioner, Washington, D. C.

DEAR SIR:

Your telegram of the 28th was duly received and I telegraphed immediately to Mr. Zayas, of the approval of the sketch and report in regard to the monuments in the old river abandoned by the cut-off, and to go on as they proposed.

I have received to day your note of December 28th with the sketchs you enclosed of which I return the blue print after signing it.

In separate package I send you to day the book of Incomplete Proceedings that you kindly lent me there and for which I thank you very much.

All I had to do in this city in regard to my report of the boundary West of El Paso, is finished; but the binders will not finish their part till the end of the month. So I thought better to go to El Paso and return again to receive all the copies of said report, and I am going to leave, consequently, for El Paso next Wednesday the 1st.

I remain yours very truly, JACOBO BLANCO,
Mexican Commissioner.

Mr. Dillard to General Mills.

EL PASO, TEXAS, *Jan. 21, 1902.*

General ANSON MILLS,
Commissioner,
No. 2 Dupont Circle,
Washington, D. C.

GENERAL:

I beg to transmit herewith Joint report of engineers on the location and placing of (10) monuments to mark the International Boundary along the old river bed around the El Paso cut-off.

I have the honor to be, Sir,

Your obedient servant, J. D. DILLARD
Acting Consulting Engineer.

[Inclosure.]

Joint Report of International Boundary Engineers.

EL PASO, TEXAS, *Jan. 21, 1902.*

To the Honorable COMMISSIONERS,
International (Water) Boundary Commission,
United States and Mexico.

GENTLEMEN:

In compliance with instructions contained in your Joint Journal of December 4th, 1901, transmitted to us in Joint letters of the same date, we beg to report that on December 21, 1901, we went along the old river bed and agreed on the location of (10) monuments, to effectively mark the International Boundary in the bed of the old river, the channel of which was changed by the El Paso cut-off, and on this date submitted a sketch map, showing the proposed location of (10) monuments for your approval. On December 28th we were instructed, by telegraph, by our respective commissioners that the location and number of monuments were approved.

We now report that these (10) monuments are all in position, five having been erected by the American Engineer and five by the Mexican Engineer. Each monument sets on a concrete base three feet square and two feet high, which has a concrete sub-base four feet square and one half foot thick. The monuments are duplicates of those placed by the International (Water) Boundary Commission to mark the International Boundary around the Island of San Elizario.

We have computed a traverse from monument to monument, and from monument No. (1) to the flag pole on the dome of El Paso County Court House and the Church Tower in Juarez, to serve as an aid in relocating them in case they are destroyed.

This traverse is not the boundary line between the two countries, as the latter follows the meanders of the old channel from monument to monument. The traverse is made up of troangulation and steel tape measurements and is as follows:

U. S. ENGINEER'S TRAVERSE.

Beginning at monument No. (1), which sets in center of old channel near head of El Paso cut-off, whence flag pole on dome of El Paso County Court House bears N. 80° 31′ 04″ W. 2407.79 Meters, and tower of old Church in Juarez, Mexico bears S. 55° 25′ 17″ W. 3191.74 Meters.

Thence	N. 25° 21′ 04″ W.	133.22	Meters	to	monument	No. (2)
"	N. 44° 12′ 32″ W.	1013.36	"	"	"	" (3)
"	N. 56° 48′ 33″ E.	1162.16	"	"	"	" (4)
"	S. 78° 25′ 09″ E.	834.50	"	"	"	" (5)
"	S. 47° 21′ 57″ W.	958.65	"	"	"	" (6)
"	N. 80° 49′ 35″ E.	585.91	"	"	"	" (7)
"	S. 24° 14′ 24″ E.	319.78	"	"	"	" (8)
"	S. 61° 27′ 55″ E.	209.61	"	"	"	" (9)
"	N. 12° 04′ 41″ E.	226.27	"	"	"	" (10)

MEXICAN ENGINEER'S TRAVERSE.

Beginning at monument No. (1), which sets in center of old channel near head of El Paso cut-off, whence flag pole on dome of El Paso County Court House bears N. 80° 31′ 02″ W. 2407.54 Meters, and tower of old Church in Juarez, Mexico bears S. 55° 25′ 17″ W. 3191.74 Meters.

Thence	N. 25° 19′ 34″ W.	133.21	Meters	to	Monument	No. (2)
"	N. 44° 12′ 16″ W.	1013.38	"	"	"	" (3)
"	N. 56° 48′ 35″ E.	1162.25	"	"	"	" (4)
"	S. 78° 24′ 43″ E.	834.40	"	"	"	" (5)
"	S. 47° 21′ 19″ W.	958.44	"	"	"	" (6)
"	N. 80° 49′ 40″ E.	585.75	"	"	"	" (7)
"	S. 24° 13′ 44″ E.	319.79	"	"	"	" (8)
"	S. 61° 27′ 51″ E.	209.62	"	"	"	" (9)
"	N. 12° 03′ 52″ E.	226.15	"	"	"	" (10)

The prolongation of a right line through monument Nos. (1) and (2) to an intersection of the center line of the normal channel of the Rio Grande is the point of departure of the boundary line from the river's channel. From this initial point the

boundary is the center of the old river bed to monument No. (10).

The prolongation of a right line through monument Nos. (9) and (10) to a point of intersection with the normal channel of the Rio Grande is the terminus of the boundary line along the abandoned channel.

For future reference we give the latitude and departure of each monument and the tower of the old church at Juarez, Mexico, from the flag pole on the dome of El Paso County Court House, also the latitude and departure of the Church and Court House from monument No. (2) of the land boundary west from near El Paso, Texas.

Latitude and Departure as computed by U. S. Engineer.

Monument	North	South	East	West
1		396. 64	2374. 97	
2		276. 25	2317. 93	
3	450. 13		1611. 34	
4	1086. 33		2583. 96	
5	918. 80		3401. 48	
6	269. 49		2696. 21	
7	362. 96		3274. 68	
8	71. 31		3405. 95	
9		28. 82	3590. 10	
10	192. 46		3637. 45	

Latitude and Departure as Computed by Mexican Engineer.

Monument	North	South	East	West
1		396. 70	2374. 96	
2		276. 30	2317. 98	
3	450. 15		1611. 43	
4	1086. 39		2584. 07	
5	918. 78		3401. 46	
6	269. 49		2696. 47	
7	362. 86		3274. 73	
8	71. 23		3405. 97	
9		28. 91	3590. 13	
10	192. 10		3637. 35	

All distances given are in meters.

The flag pole on dome of El Paso County Court House is 2825.83 Meters south and 5024.11 Meters east, and Tower of old Church in

Juarez, Mexico is 5033.90 Meters south and 4771.17 Meters east of Monument No. (2) of the land boundary west from El Paso, Texas.

We have the honor to be, Sirs,

Very respectfully your obedient servants,

J. D. DILLARD
E. ZAYAS

Mr. Keblinger to Mr. Dillard.

DEPARTMENT OF STATE
INTERNATIONAL (WATER) BOUNDARY COMMISSION
UNITED STATES AND MEXICO.
Washington, D. C., January 31, 1902.

Mr. J. D. DILLARD,
Acting Consulting Engineer,
El Paso, Texas.

DEAR SIR:

General Mills directs me to acknowledge receipt of the Joint Report of the Engineers regarding the placing of ten monuments around the old river bed below El Paso at the cut-off.

He also desires to acknowledge receipt of your letter of January 18th, concerning bills for monuments. In this connection I beg to state that Mr. W. W. Follett has been reappointed as Consulting Engineer of the Commission and will take charge about the middle of February and I will refer these bills to him as the first transaction was carried on during his previous incumbency and he will know whether or not the Mexican section paid for one-half.

Very truly yours, W. W. KEBLINGER,
Secretary.

General Mills to Mr. Root.

EL PASO, TEXAS, *July 3, 1907.*

The Honorable,
The SECRETARY OF STATE.

SIR:

I have the honor to enclose herewith proceedings covering the remonumentation of the old channel of the Rio Grande around the "Bosque de Cordoba," a piece of land which was left on the American side of the river in 1900 by reason of the opening of the El Paso "cut-off" in 1899.

Regarding the "International Highway" proposed in this Journal, I beg to refer you to my letter of June 6, 1907, requesting instructions on this matter.

I have the honor to be, Sir,

Very respectfully,

Your obedient servant,

ANSON MILLS,
American Commissioner.

[Inclosure 1.]

[Joint Journal.]

EL PASO, TEXAS, *June 27, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 11 o'clock A. M.

The Mexican Commissioner presented certain correspondence exchanged by him with the Mexican Department of State regarding the monuments which demarcate the old channel of the Rio Grande around the "Bosque de Cordoba," a piece of land which was left on the American side of the river by the well-known "Cordoba Cut-off," without, however, taking it without the jurisdiction of Mexico.

The Mexican Commissioner stated that this correspondence brought out the following facts: first, that the present monuments are entirely inadequate to properly mark the old river bed, with its many meanderings and a growing tendency towards obliteration, and, second, the convenience of having new monuments so situated that the boundary line would be demarcated by a series of straight lines from monument to monument, as such lines would be quite apparent and could be definitely fixed if desired; and he suggested, as a proper means to this end, the location of seventeen (17) vertices, as shown on a sketch map which he produced, and which is attached to these proceedings, and stated that the ten (10) existing monuments could be utilized in the new demarcation by changing their location and adding seven more monuments.

The second proposition involved in the abovementioned correspondence refers to the establishment of an international highway around the "Bosque de Cordoba," such highway to be identical with that existing along the Western Boundary Line and providing the same advantages.

Notwithstanding the fact that the Mexican Commissioner is well acquainted with the different political organizations of the two countries and the difficulties that are likely to arise in the creation of such a highway he begs to respectfully submit the matter for the consideration of the American Commissioner with the hope that if he deems it practicable and convenient he refer it to his Government for appropriate action.

The American Commissioner stated, in reply, that he had considered carefully the question of placing new monuments in the old bed of the Rio Grande around the "Bosque de Cordoba" and agreed with the Mexican Commissioner that under the present conditions it was very desirable to make the remonumentation and suggested that the Joint Consulting Engineers be requested to make a new and accurate survey of said old channel and to locate new monuments therein at such points as are necessary to make the intersection of a series of straight lines which will lie approximately in the center of the old river bed.

Regarding the International highway recommended by the Mexican Commissioner the American Commissioner stated that upon the receipt of the Mexican Commissioner's letter of May 28, last, enclosing his correspondence with the Mexican Minister of Foreign Relations he submitted the same to his Department with the request that he be instructed whether such a highway could be created, and as soon as these instructions are received he will promptly advise the Mexican Commissioner.

To which the Mexican Commissioner replied that the suggestions of the American Commissioner were entirely satisfactory to him and that he highly appreciated the prompt acceptance of his recommendations by the American Commissioner.

Whereupon it was agreed that the Joint Consulting Engineers be requested to make a new and accurate survey of the old channel of the Rio Grande around the "Bosque de Cordoba" and to locate monuments therein at such places as are necessary to mark the intersections of a series of straight lines which will lie approximately in the center of the old river bed, and submit same to the Commissioners, and that they be furnished with a copy of this Journal.

The Commission then adjourned.

JULY 2, 1907.

The Joint Commission met at the office of the Mexican Commissioner at 3 o'clock P. M.

The Joint Consulting Engineers having submitted their report and map (copy attached hereto), showing the new location of the monuments in the abandoned channel of the Rio Grande around the "Bosque de Cordoba," requested in the Joint Journal of June 27, 1907, the same was duly approved by the Commissioners.

Attention is directed to the proposed International Highway in this abandoned channel, sixty (60) feet wide on each side of the boundary line, which is shown on this map by a broken line.

The Commission then adjourned.

ANSON MILLS. FERNANDO BELTRÁN Y PUGA.
WILBUR KEBLINGER. CÉSAR CANSECO.

[Translation.]

[Sub-inclosure 1.]

Señor Puga to Señor Mariscal.

No. 144—New demarcation of Cordoba Cut-off.
Inclosure: 1 map.

EL PASO, TEXAS, *March 14, 1907.*

Mr. SECRETARY OF FOREIGN RELATIONS:

I have been receiving visits during the last few days from several Mexican and American owners of the lands adjacent to the channel which was abandoned by the Rio Grande when it deviated from its course a few years ago and formed the so-called "Cordoba Cut-off." According to the treaties in force, the boundary line between Mexico and the United States should be the center of said channel, and it is also this very line which divides estates situated in the two countries and belonging in part to the said persons. The object of their visit was to obtain from me the permission and the topographical data necessary in order to trace out and fence in their boundaries in the river, and the reason for desiring and asking this in somewhat of a hurry is that the American side is being rapidly incorporated into a city and built, for the limits of El Paso extend far beyond the Cordoba Cut-off. Owing to this peculiar position of the lands they are apt to give rise to disputes and controversies regarding their boundaries.

In 1902 the Mexican and American Boundary Commissioners requested and obtained authority from their two governments to

establish the line of the center of the old channel clearly and permanently by means of iron monuments. For this purpose they instructed their consulting engineers to select on a map of the locality the points suitable for the erection of the necessary monuments, and the said engineers selected the ten points shown on the map of which I have appended a copy as inclosure 1. Their selection was approved by the Commissioners and the monuments were accordingly erected in the places indicated. In the report then made by the said engineers the latter stated that the boundary line would not be the series of straight lines connecting one monument with the next, but that it would follow the windings of the center of the river; however, they did not make of this line any survey duly connected with the monuments. Perhaps it did not appear at that time, when the recently abandoned channel was plainly marked, that this omission would give rise to any doubts or difficulties, but inasmuch as the dry channel is becoming constantly more obliterated as time goes on and since, in view of this fact and of the lack of a survey, the only permanent guide remaining by which the owners along the banks can recognize the dividing line is the monuments erected, it has now become obvious that the original demarcation was inadequate.

On the appended map I have traced in black lines the polygon which unites the present monuments, and on this map you will see the difference between this polygon and the real original line formed by the center of the channel.

From what has been stated it appears necessary in my opinion to relocate the monuments of the artificial bar in question and place them in such manner that the original center of the river bed may be practically superseded by the polygon formed by the new monuments, for which purpose it would be necessary to locate the latter in such a way as to have the (very small) parts taken away from one country compensated by those given to the other. I have marked by a red line on the appended map a polygon with seventeen vertexes, which, in my judgment, would fulfil this condition pretty well, and I take the liberty of recommending it to your consideration.

The present case, in which an imaginary line is to serve as a boundary for an American frontier town actually existing and perhaps some day for another neighboring Mexican town, is entirely analogous to the case which has been studied before in Nogales and Naco (Sonora, Arizona). The same difficulties in

fiscal and police matters may present themselves here, and, therefore, the same partial preventive measure can be adopted against them here as there. The preventive measure in those two cases was the creation of a strip of land called the "International Street," free from all buildings and suited for the maintenance of a strict vigilance. This strip is 36 meters (120) broad at Naco (18 meters on each side of the boundary line) and I believe that the same dimensions would be applicable here. Such a "street" would doubtless not sufficie to avoid the many difficulties sure to arise some day in the locality in question from the causes indicated, but it would help some to avoid them by affording an easy means of exercising vigilance (and this is all that appears practicable thus far).

I therefore take the liberty, in conclusion, to request you, in view of the foregoing, to authorize me to make the following proposition to the American Delegate in this Commission in a formal mixed session.

1st. That new monuments be placed along the boundary of the artificial bar formed by the "Cordoba Cut-off," distributing them in the manner which I indicate or in any other manner which may better accomplish the purpose of fixing the boundary line there permanently, equitably, and practically by means of straight lines extending from one monument to the next.

2d. That the polygon formed by the new monuments be adopted as the boundary line in lieu of the meandering line of the center of the abandoned channel.

3d. To establish along this line an "international street" similar to the one proposed for Naco.

I reiterate to you the assurance of my respectful consideration.

(Signed) FERNANDO BELTRÁN Y PUGA, (Flourish)

(Seal)

A true copy:

EL PASO, TEXAS, *May 28, 1907.*

CÉSAR CANSECO,

Mexican Secretary.

[Translation.]

[Subinclosure 2.]

Señor Mariscal to Señor Puga.

(On the margin a seal, with the national coat of arms, reading: "Department of State and Foreign Relations, Mexico." Another seal reading: "Boundary Section. No. 165")

"New demarcation of the Cordoba Forest"

MEXICO, *May 7, 1907.*

In reply to your communication No. 144 of March 14, last, regarding the necessity of locating a larger number of monuments in the old channel of the ground called "Cordoba Forest," I will state to you that, in order to avoid the difficulties likely to arise among the owners of contiguous property in that part of the Rio Grande owing to the gradual obliteration by filling in of the dry channel which indicated the real boundary, I approve the plan submitted by you for the placing of monuments in the said channel in accordance with the map which you presented to the Boundary Section of this Department, as I also do the idea of reserving a strip of land of 18 meters on each side, from from any buildings, in accordance with the plan adopted at Naco.

I renew to you my expressions of regard.

(Signed) MARISCAL. (Flourish.)

Mr. ENGINEER FERNANDO BELTRÁN Y PUGA,
Mexican Boundary Commissioner,
El Paso, Texas.

A true copy:

EL PASO, TEXAS, *May 28, 1907,*
CÉSAR CANSECO,
Mexican Secretary.

[Translation.]

[Subinclosure 3.]

Señor Puga to Señor Mariscal.

No. 169.

New demarcation of the "Cordoba Cut-off."

EL PASO, TEXAS, *May 22, 1907.*

Mr. SECRETARY OF FOREIGN RELATIONS.
Mexico, F. D.

By your communication No. 165 of the 7th instant, I am informed that you approve my ideas regarding the new demarcation

of the "Cordoba Cut-off." Using this note of yours as letter of introduction, I shall propose the matter officially at the next session of the Mixed Commission, which I expect will be held very shortly.

I reiterate to you the assurances of my respectful consideration.

(Signed) FERNANDO BELTRÁN Y PUGA. (Flourish.)

A true Copy.

El Paso, Texas, May 28, 1907.

CÉSAR CANSECO,

Mexican Secretary.

[Subinclosure 4.]

Joint Report of International Boundary Engineers.

EL PASO, TEXAS, *July 2, 1907.*

The HONORABLE COMMISSIONERS,

International Boundary Commission,

United States and Mexico.

GENTLEMEN:

We have the honor of acknowledging receipt of your letter of yesterday, inclosing copy of your Journal of June 27th, relating to the more perfect marking of the International Boundary line in the old channel of the Rio Grande which lies just below El Paso, Texas, and which was abandoned by the river in 1900 through the opening of the El Paso "cut-off" in 1899.

From a survey and map made by the United States Consulting Engineer in March and April, 1899, we have made a tracing and have platted on it the approximate location of 19 monuments, as well as the location of the 10 existing monuments. These monuments can be connected by straight lines which will lie wholly within the old river bed and will give room for a highway 120 ft. wide—60 feet on each side of the above-mentioned straight lines, which will be, except in two or three places where points of high sand bars may be cut, wholly within the old river bed.

We attach this tracing to this report. We will make an accurate survey and map when we erect the monuments.

Old monument No. 10, the last one going down the river, may have to be moved some distance from where it is shown on this map, because the river has moved away from it. The rest of the 19 will be placed close to the locations shown on the map.

Old monument No. 1 will not be moved; No. 7 may not be moved; all the rest of the old ones will be moved.

As there are now 10 monuments, 9 new ones will be needed.

Respectfully submitted.

(Signed) W. W. FOLLETT, *U. S. Consulting Engineer.*

(Signed) E. ZAYAS, *Ing. Consultor.*

[Inclosure 2.]

[Acta.]

EL PASO, TEXAS, *Junio 27 de 1907.*

La Comisión mixta se reunió en la oficina de la sección mexicana de ella á las 11 A. M.

El Comisionado de México presentó una correspondencia cruzada entre él y la Secretaría de Relaciones de México á propósito de los monumentos que marcan el antiguo lecho del Río Grande alrededor del Bosque de Córdoba, terreno que fue dejado al lado izquierdo del río por el conocido "Corte de Córdoba", aunque sin que México perdiera sobre él su jurisdicción.

Según se ve en esa correspondencia, la práctica ha demostrado: por una parte, la insuficiencia de los monumentos existentes para demarcar una línea natural del terreno muy sinuosa y que teinde á desaparecer; por otra, la conveniencia de establecer nuevos monumentos en posición tal que la línea divisoria entre ambos países quede marcada por la serie de líneas rectas que vayan de cada uno de ellos al anterior ó al siguiente, pues estas líneas serían evidentes por sí mismas y podrían fácilmente reproducirse con exactitud en todo tiempo. Propuso al efecto el Comisionado mexicano para la nueva monumentación que sugiere, la colocación de los (17) diez y siete vértices señalados en un diseño que mostró y que se anexa á esta Acta:—en la nueva distribución se podrían utilizar los (10) diez monumentos de fierro existentes, aunque en diverso sitio de donde ahora están, y completárseles con (7) siete más.

En cuanto á la segunda parte de la proposición envuelta en la mencionada correspondencia, se refiere á la creación de una Calle Internacional, análoga á la de la línea del Oeste, alrededor del terreno á que aquí se hace referencia, siendo las ventajas de esa Calle precisamente las mismas que en el Oeste. Aun cuando el Comisionado de México conoce la organización política diversa de los dos países y las dificultadas que puede haber para la creación de esa Calle, desea someter respetuosamente el asunto á la consideración del Comisionado de los Estados Unidos para que, si

estima conveniente llevarlo á la práctica, se sirva recomendarlo á su Gobierno en la forma que encuentre más efectiva y apropiada.

El Comisionado americano dijo que había estudiado con cuidado la cuestión de colocar nuevos monumentos en el antiguo lecho del Río Grande alrededor del "Bosque de Córdoba" y que estaba de acuerdo con el Comisionado mexicano en que es muy de desearse en las presentes circunstancias hacer esa remonumentación y propuso que se pida á los Ingenieros Consultores que unidos hagán un nuevo levantamiento exacto de dicho cauce y que localizen en él los vértices que sean precisos para marcar las intersecciones de una serie de líneas rectas que quede aproximadamente en el centro del antiguo lecho, sometiendo luego esa localización á los Comisionados.

Respecto á la "Calle Internacional" recomendada por el Comisionado mexicano, el de los Estados Unidos expuso: que cuando recibió la carta de dicho Comisionado, el 28 de Mayo último, á la cual adjuntaba su correspondencia con el Secretario de Relaciones de México, la sometió á su Departamento y pidió instrucciones sobre si podría crearse tal Calle; que inmediatamente que reciba esas instrucciones las comunicará al Comisionado mexicano. Á lo cual contestó éste que eran del todo satisfactorias las declaraciones del Comisionado americano y que apreciaba debidamente la pronta aceptación de sus proposiciones por el mismo.

En seguida de lo cual se acordó pedir á los Ingenieros Consultores que unidos hagan un nuevo levantamiento exacto del antiguo cauce del Río Grande alrededor del "Bosque de Córdoba" y que localizen en él monumentos que estén situados de tal manera que marquen las intersecciones de una serie de líneas rectas que ocupen aproximadamente el centro del antiguo lecho, localización que sujetarán á la aprobación de los Comisionados, y que se les proporcionen á dichos Ingenieros Consultores copias de esta Acta.

En seguida se levantó la sesión.

EL PASO, TEXAS, *Julio 2 de 1907.*

La Comisión Mixta se reunió á las 3 P. M. en la oficina del Comisionado Mexicano.

Habiendo presentado los Ingeniero Consultores su Informe y su plano (aquí anexo) sobre la re-monumentación del cauce antiguo del Río Grande alrededor del "Bosque de Córdoba", según se les pidió por el Acta del 27 de Junio de 1907, los Comisionados les prestaron su debida aprobación.

Se llama aquí la atención hacia la Calle Internacional, de 60 pies de ancho á cada lado del lindero, que se propone para el cauce antiguo y que se muestra en el plano por medio de líneas de puntos.

Se levantó con esto la sesión.

FERNANDO BELTRÁN Y PUGA. ANSON MILLS.
CÉSAR CANSECO. WILBUR KEBLINGER.

[Subinclosure 1.]

Señor Puga to Señor Mariscal.

Número 144. Re-Monumentación del Corte de Córdoba.
Anexo: 1 plano.

EL PASO, TEXAS, *Marzo 14 de 1907.*

Señor SECRETARIO DE RELACIONES EXTERIORES,
México, D. F.

He estado recibiendo en estos días visitas de varios propietarios mexicanos y americanos de los terrenos adyacentes al cauce que abandonó el Río Grande cuando se hizo hace algunos años la derivación llamada "Corte de Córdoba." Según los Tratados en vigor, la línea divisoria entre México y los Estados Unidos debe ser el eje de dicho cuace y esa misma línea es también la que divide predios situados en los dos paises y que pertenecen, en parte, á las mencionadas personas. El objeto de sus visitas ha sido obtener de mí el permiso y los datos topográficos necesarios para trazar y cercar sus linderos en el río, y la razón de que lo deseen y soliciten con cierta urgencia es que rápidamente se está urbanizando el lado americano de aquella localidad y se está edificando en él, pues los límites de El Paso se extienden hasta mucho más allá del "Corte de Córdoba:" esta particular posición de tales terrenos los hace sumamente aptos para que se originen en ellos discusiones y dificultades acerca de sus límites.

En el año de 1902 pidieron y obtuvieron los Comisionados mexicano y americano de Límites autorización de sus dos Gobiernos para fijar de un modo claro y permanente, por medio de monumentos de hierro, la línea del eje del cauce antiguo. Con ese fin ordenaron á sus Ingenieros Consultores que eligieran en un plano del lugar los puntos convenientes para erigir los monumentos necesarios y dichos Ingenieros escogieron los 10 que constan en el plano de que aquí adjunto copia en el anexo 1 y su elección fué aprobada por los Comisionados, siendo, en consecuencia, levantados los mounumentos en tales lugares. En el Informe que entonces rindieron los citados Ingenieros hacían notar que la línea

divisoria no sería la serie de rectas que enlazaban un monumento con el siguiente, sino que, seguiría la línea sinuosa del eje del río; pero no hibieron ningún levantamiento de tal línea debidamente ligado á los monumentos. Esto en aquella época en que estaba perfectamente marcado el cauce recientemente abandonado, no pareció, tal vez, que pudiera originar dudas ó dificultades; pero como con el tiempo trascurrido el cauce seco va borrándose cada vez más y como con esto y la falta del levantamiento citado la única guía estable que queda á los ribereños para reconocer la línea divisoria son los monumentos erigidos, ha llegado ahora á hacerse patente la deficiencia de la primera monumentación. En el adjunto plano he trazado con líneas negras el polígono que une entre sí á los monumentos actuales, que son los únicos puntos estables de la línea, y en este trazo verá usted la diferencia entre ese polígono y el verdadero contorno primitivo del eje del cauce.

Resulta de lo anterior, á mi parecer, la necesidad de hacer una nueva monumentación del "banco" artificial en cuestión y hacerla en tal forma que sea prácticamente substituible el eje original del río por el polígono que determinen los nuevos monumentos, para lo cual habría que elegir la posición de estos de tal manera que se compensaran las partes (pequeñísimas) que se quitaran á un país con las que se le dieran al otro. He marcado con línea roja en el plano anexo un polígono de 17 vértices que, á mi juicio, llenaría bastante bien esta condición y me permito recomendarlo á la consideración de usted.

El caso actual, en que una línea imaginaria va á servir de demarcación á una población americana fronteriza existente y tal vez algún día á otra vecina mexicana, es del todo análogo á los que anteriormente se han estudiado en Nogales y Naco (Sonora-Arizona). Las mismas dificultades en materias fiscales y de policía pueden presentarse aquí y, por lo tanto, el mismo preventivo parcial contra ellas es aplicable aquí que allá, preventivo que en esos dos otros casos ha sido la creación de una faja de terreno, llamada "Calle Internacional," libre de toda construcción y adecuada para una estricta vigilancia. Esa faja en de 36 metros (120 pies) de ancho en Naco (18 metros á cada lado de la línea divisoria) y creo que la misma dimensión sería aquí aplicable. Esta "Calle" no bastaría indudablemente para evitar las muchas dificultades que de seguro surgirán algún día en el lugar en cuestión por los motivos indicados; pero algo ayudaría (todo lo que hasta ahora parece practicable) á evitarlas mediante una fácil vigilancia.

Me permito, pues, para concluir, suplicar á usted que, en consideración á todo lo anterior, se sirva autorizarme para proponer lo siguiente al Delegado americano en esta Comisión, en sesión mixta formal: Primero, que se re-monumente el contorno del "banco" artificial formado por el "Corte de Córdoba" distribuyendo los monumentos en la forma que indico ó en alguna otra que llene mejor el objeto de fijar ahí la línea divisoria de un modo estable, equitativo y práctico por medio de líneas rectas que vayan de un monumento al adyacente; Segundo, adoptar como línea divisoria el polígono determinado por los nuevos monumentos, en substitución de la sinuosa del eje del cauce abandonado; Tercero, establecer á lo largo de este contorno una "Calle Internacional" idéntica á la propuesta para Naco.

Reitero á usted las seguridades de mi respetuosa consideración.

(Firmado) FERNANDO BELTRÁN Y PUGA.—RÚBRICA.

Es copia.

EL PASO, TEXAS, *Mayo 28 de 1907*.

CÉSAR CANSECO

Secretario Mexicano.

[Subinclosure 2.]

Señor Mariscal to Señor Puga.

Al margen un Sello, con el escudo nacional, que dice:—"Secretaría de Estado y del Despacho de Relaciones Exteriores.—México." Otro sello que dice: Sección de Límites. No. 165.

Remonumentación del "Bosque de Córdoba."

MÉXICO, *Mayo 7 de 1907*.

Contesto el oficio de usted número 144 de 14 de Marzo último, que trata sobre la necesidad de colocar mayor número de monumentos en el cauce antiguo del terreno denominado "Bosque de Córdoba," manifestándole que á fin de evitar las dificultades que puedan sobrevenir entre los colindantes, en esa parte del río Bravo, á causa de estarse borrando por los azolves el cauce seco que señalaba el verdadero límite, apruebo el proyecto presentado por usted para la colocación de monumentos en el referido cauce, según el plano que entregó en la Mesa de Límites de esta Secretaría, así como la idea de reservar una faja de terreno de 18 metros

por cada lado, libre de toda construcción, conforme á los practicado en Naco.

Renuevo á usted mi consideración.

(Firmado) MARISCAL—RÚBRICA.

Señor Ingeniero Don FERNANDO BELTRÁN Y PUGA,
Comisionado Mexicano de Límites,
El Paso, Texas.

Es Copia.

EL PASO, TEXAS, *Mayo 28 de 1907.*
CÉSAR CANSECO
Secretario Mexicano.

[Subinclosure 3.]

Señor Puga to Señor Mariscal.

No. 169.

Re-monumentación del "Corte de Córdoba."

EL PASO, TEXAS, *Mayo 22 de 1907.*

Señor SECRETARIO DE RELACIONES EXTERIORES,
México, D. F.

Por el oficio de usted No. 165, del día 7 del mes en curso, quedo enterado de que aprueba usted mis ideas acerca de la re-monumentación del "Corte de Córdoba." Valiendome como de una introducción de esta nota de usted, propondré el asunto oficialmente en la próxima sesión de la Comisión Mixta, que espero se verificará muy en breve.

Reitero á usted las seguridades de mi respetuosa consideración

(Firmado) FERNANDO BELTRÁN Y PUGA.—RÚBRICA.

Es copia.

EL PASO, TEXAS, *Mayo 28 de 1907.*
CÉSAR CANSECO.
Secretario Mexicano.

[Subinclosure 4.]

Joint Report of International Boundary Engineers.

EL PASO, TEXAS, *Julio 2 de 1907.*

Señores COMISIONADOS:

Tenemos la honra de acusar recibo del oficio de ustedes fechado ayer, que contiene copia del Acta de Junio 27 del corriente año, relativa al perfeccionamiento de la monumentación de la línea divisoria Internacional en el cauce antiguo del Río Bravo, situado un poco abajo de El Paso, Texas, y abandonado en 1900 con la apertura del canal artificial en 1899.

Hemos hecho una calca de un plano que levantó el Ingeniero Consultor de los Estados Unidos en Marzo y Abril de 1899 y en ella dibujamos aproximadamente las situaciones de 19 monumentos así como las de los 10 que existen actualmente. Pueden conectarse estos 19 monumentos por medio de líneas rectas que quedarán por completo dentro del cauce antiguo del río, dentro del cual cabrá una calle de 120 piés de ancho—60 de cada lado de las rectas mencionadas. Con excepción de 2 ó 3 lugares en donde los bordos altos de arena sobre salen un poco, toda la calle puede quedar completamente dentro del cauce antiguo.

Á reserva de hacer un levantamiento más detallado del lugar en cuestión al tiempo de erijir los monumentos, agregamos la calca referida al presente oficio.

El antiguo monumento No. 10 que es el último y cercano al cauce del río en el extremo inferior del terreno tal vez necesite ser removido y colocado nuevamente á alguna distancia de la situación que muestre en la calca porque el río se ha retirado de él.

El resto de los 19 monumentos se podrán colocar como lo muestra el dibujo con bastante aproximación.

El antiguo monumento No. 1 no tendrá que moverse acaso, y, acaso tampoco el No. 7; los otros se moverán de su sitio actual.

Existiendo ya 10 monumentos, solo se hacen necesarios 9 nuevos.

Reiteramos á ustedes nuestra respetuosa consideración.

E. ZAYAS,
Ingeniero Consultor Mexicano.

W. W. FOLLETT,
U. S. Consulting Engineer.

General Mills to Mr. Root.

EL PASO, TEXAS, *December 9, 1907.*

The Honorable,
The SECRETARY OF STATE,
Washington, D. C.

SIR:

I have the honor to enclose herewith Joint Journal of the 6th instant regarding the placing of nineteen international monuments in the old channel around the "Bosque de Cordoba" and completing the work outlined in the Joint Journals of June 27, and July 2, 1907.

I have the honor to be, Sir,
Very respectfully,
Your obedient servant,

ANSON MILLS
American Commissioner.

[Inclosure 1.]

[Joint Journal.]

EL PASO, TEXAS, *December 6, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

The Joint Consulting Engineers submitted their report and map showing the location of the nineteen international boundary monuments around the "Bosque de Cordoba", in accordance with the instructions contained in the Joint Journal of June 27, 1907, which report and map were approved by the Commissioners after having made a personal examination of the monuments.

Copy of the report and map are attached hereto and made a part of these proceedings.

The American Commissioner stated that the question of an international highway around the "Bosque de Cordoba", shown on the map and recommended in the Joint Journal of June 27, 1907, was still pending decision of his Department.

The Commission then adjourned to other business.

ANSON MILLS — F. B. PUGA
WILBUR KEBLINGER — CÉSAR CANSECO

[Subinclosure.]

Joint Report of International Boundary Engineers.

EL PASO, TEXAS, *November 28, 1907.*

The Honorable COMMISSIONERS,
International Boundary Commission,
El Paso, Texas.

GENTLEMEN:

We have the honor to report that, in accordance with the request contained in your Journal of June 27, 1907, we have carefully resurveyed the old channel of the Rio Grande which was abandoned when the El Paso cut off was made in 1899 and have erected therein 19 standard cast iron monuments on concrete bases. These are so located that straight lines joining monuments now form the boundary.

We hand you herewith sketch maps showing the location on the ground of these monuments. They also show the proposed 120 foot International highway. The monuments are so located that this highway lies wholly within the old channel except at two or three points where it crosses sand bars.

The obstructions on this highway consist of:

1st. Two railroad tracks on the United States side between monuments 6 and 7, each 150 meters long, or 300 meters of track.

2nd. A heavy 8 or 10 wire fence parallel to the tracks and partly North and partly South of the boundary line. It is 150 meters long parallel to the line, and turns North at each end, adding about 40 meters more fence which is on the proposed highway.

3rd. Three small adobe buildings near Mon. No. 7. Two are on the United States side and one on the Mexican side of the boundary.

4th. A jacal between monuments 14 and 15. It is on line but mostly on the United States side.

5th. A light wire fence running from monument No. 1 to about monument No. 15 and following near the boundary all the way, being sometimes on one side and sometimes on the other of it.

The following are the traverse notes of the boundary line from monument to monument.

TRAVERSE NOTES.

Beginning at monument No. 1, which stands in the center of the old channel 20 meters from the bank of the Rio Grande and whence the flag-pole on the El Paso County Court House bears:

N. 80°—31′—10″—W. 2407.79 meters.

Thence	N. 26	—15	—40	—W.	605.84	"	to Mon.	No.	2
"	N. 54	—14	—00	—W.	286.70	"	"	"	3
"	N. 74	—34	—00	—W.	282.72	"	"	"	4
"	N. 13	—30	—00	—E.	218.46	"	"	"	5
"	S. 86	—38	—40	—E.	176.46	"	"	"	6
"	N. 55	—45	—10	—E.	805.34	"	"	"	7
"	N. 62	—55	—40	—E.	379.66	"	"	"	8
"	S. 86	—20	—00	—E.	307.80	"	"	"	9
"	S. 54	—38	—00	—E.	255.64	"	"	"	10
"	S. 16	—24	—00	—E.	253.57	"	"	"	11
"	S. 21	—29	—40	—W.	138.40	"	"	"	12
"	S. 84	—01	—20	—W.	322.70	"	"	"	13
"	S. 57	—28	—40	—W.	317.32	"	"	"	14
"	S. 22	—28	—40	—W.	221.43	"	"	"	15
"	N. 83	—30	—40	—E.	545.98	"	"	"	16
"	S. 32	—23	—20	—E.	441.42	"	"	"	17
"	N. 78	—15	—40	—E.	147.41	"	"	"	18
"	N. 10	—34	—00	—E.	348.28	"	"	"	19

Respectfully submitted,

W. W. FOLLETT,
Consulting Engineer.

E. ZAYAS,
Ingeniero Consultor.

[Inclosure 2.]

[Acta.]

EL PASO, TEXAS, *Diciembre 6 de 1907.*

La Comisión Mixta se reunió á las 10 a. m. en la oficina del Comisionado de México.

Los Ingenieros Consultores presentaron un Informe en común y un plano á él anexo que describen á los diecinueve monumentos internacionales erigidos alrededor del "Bosque de Córdoba" en cumplimiento de las instrucciones que se les dieron en el Acta de la Comisión de Junio 27 de 1907, y los Comisionados, después de haber examinado personalmente dichos monumentos, adoptaron tales Informe y plano y dispusieron que se les anexara á este expediente.

El Comisionado americano declaró que continúa aún pendiente de resolverse por su Departamento la cuestión de reservar alrededor del "Bosque de Córdoba" la "Calle Internacional" que se muestra en el plano y fue recomendada por la Comisión en su Acta citada de Junio 27 de 1907.

La sesión continuó, tratándose asunto diverso.

F. B. PUGA — ANSON MILLS
CÉSAR CANSECO — WILBUR KEBLINGER

[Subinclosure.]

Joint Report of International Boundary Engineers.

EL PASO, TEXAS, *Noviembre 28 de 1907.*

Señores COMISIONADOS:

En cumplimiento de lo prevenido por ustedes en su Acta del día 27 de Junio del presente año, hemos hecho un levantamiento exacto del Río Bravo en la parte que ocupó el cauce abandonado en la "Vuelta de Córdoba" (El Paso cut off) cuando se abrió el canal artificial en el año de 1899; y hemos construido en dicho cauce 19 monumentos típicos de hierro sobre bases de concreto, de modo que la línea divisoria queda marcada por las líneas rectas que unen cada monumento con los adyacentes.

Agregamos al presente Informe un plano que muestra la localización en el terreno de los referidos monumentos, así como la calle Internacional de 120 pies (36.57 metros) que se ha propuesto y que, siguiendo la dirección de los monumentos, queda casi toda dentro del cauce antiguo del río, con excepción de dos ó tres puntos situados sobre bancos de arena.

En este calle ó camino público, hay actualmente las siguientes obstrucciones:—

1a. En el lado de Estados Unidos, dos vías férreas entre los monumentos 6 y 7 tienen una longitud de 150 metros cada una (300 metros de vía.)

2a. Una cerca grande de 8 ó 10 alambres que corre paralelamente á las vías mencionados, en parte al Norte y parte al Sur de la línea divisoria en un trayecto de 150 metros, y paralelamente á ella y que voltea en sus dos extremidades hacia el Norte agregando así como 40 metros á la longitud anterios; todo dentro de la mencionada calle Internacional.

3a. Tres casas pequeñas de adobe cerca del monumento No. 7; dos en el lado de los Estados Unidos y una en el de México.

4a. Un "jacal" entre los monumentos Nos. 14 y 15 que queda sobre la línea y su mayor parte en el lado de Estados Unidos.

5a. Una cerca de alambre ligeramente construida desde el Monumento No. 1 hasta el 15 siguiendo más ó menos la dirección de la línea, cercana á ella y quedando en partes de un lado y en partes de otro.

Á continuación damos una lista de rumbos y distancias entre los monumentos:

Comenzando en el monumento No. 1 situado en el centro del antiguo cauce, á 20 metros distante de la margen ó bordo del Río Bravo y á S. 80° 31′ 10″ E. del asta bandera del edificio del Condado en El Paso, 2,407.79 metros.

de allí al	N. 26° 15′ 40″ W.	605.84	al	M°	N°	2.
" " "	N. 54° 14′ 00″ W.	286.70	"	"	"	3.
" " "	N. 74° 34′ 00″ W.	282.72	"	"	"	4.
" " "	N. 13° 30′ 00″ E.	218.46	"	"	"	5.
" " "	S. 86° 38′ 40″ E.	176.46	"	"	"	6.
" " "	N. 55° 45′ 10″ E.	805.34	"	"	"	7.
" " "	N. 62° 55′ 40″ E.	379.66	"	"	"	8.
" " "	S. 86° 20′ 00″ E.	307.80	"	"	"	9.
" " "	S. 54° 38′ 00″ E.	255.64	"	"	"	10.
" " "	S. 16° 24′ 00″ E.	253.57	"	"	"	11.
" " "	S. 21° 29′ 40″ W.	138.40	"	"	"	12.
" " "	S. 84° 01′ 20″ W.	322.70	"	"	"	13.
" " "	S. 57° 28′ 40″ W.	317.32	"	"	"	14.
" " "	S. 22° 28′ 40″ W.	221.43	"	"	"	15.
" " "	N. 83° 30′ 40″ E.	545.98	"	"	"	16.
" " "	S. 32° 23′ 20″ E.	441.42	"	"	"	17.
" " "	N. 78° 15′ 40″ E.	147.41	"	"	"	18.
" " "	N. 10° 34′ 00″ E.	348.28	"	"	"	19.

Reiteramos á ustedes nuestra respetuosa consideración.

(Firmado)

E. ZAYAS,
Ingeniero Consultor Mexicano.
W. W. FOLLETT,
Ingeniero Consultor Americano.

Es copia.

CÉSAR CANSECO
Secretario Mexicano.

PROCEEDINGS OF THE INTERNATIONAL BOUNDARY COMMISSION IN THE MATTER OF THE BANCO SAN LORENZO.

General Mills to Mr. Knox.

INTERNATIONAL BOUNDARY COMMISSION
UNITED STATES AND MEXICO
AMERICAN SECTION

Washington, D. C., March 15, 1911.

The Honorable
The SECRETARY OF STATE.

SIR:

I have the honor to enclose herewith copies, in Spanish and English, of the proceedings before this Commission in the matter of the San Lorenzo Case. No decision was given in this case by reason of a general order of the two Governments suspending decisions of the Commission until further notice.

I have the honor to be, Sir,

Very respectfully,
Your obedient servant,
ANSON MILLS,
Commissioner.

[Joint Journal.]

EL PASO, TEXAS, *November 18, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 3.30 o'clock P. M.

The Mexican Commissioner presented a letter to the American Commissioner, dated November 18, 1907, with two enclosures, reopening the case regarding the cutting off of certain land from the Real de San Lorenzo adjoining the town of Ciudad Juarez, Chihuahua, Mexico, by the Rio Grande during the floods of 1897

and 1898, which case was discussed in Joint Session of the Commission on December 19, 1898.

The American Commissioner formally accepted the letter and enclosures, which are attached hereto and made a part of these proceedings.

Without further discussion it was agreed that the Commissioners proceed tomorrow morning, the 19th instant, to the land in question and make a personal examination of same as required by Treaty.

The Commission then adjourned.

CHANGE IN THE RIO GRANDE IN THE REAL DE SAN LORENZO.

EL PASO, TEXAS, *November 18, 1907.*

General ANSON MILLS,

American Boundary Commissioner,

Present.

DEAR SIR:

By means of this note permit me to respectfully request a decision upon the question which I will explain later, which has remained pending decision of our Commission for some years, awaiting the promulgation of the treaty for the elimination of the bancos. This treaty having been recently confirmed the reason for delay no longer exists.

The history of the case is as follows:

On October 31, 1898, my predecessor, Mr. Blanco, presented you a letter and map, by means of which the Judge of the District of Ciudad Juarez, in the name of Engineer Eduardo Prieto Basave, asked that the Commission determine the nationality of a certain extension of land separated by the Rio Grande from the Mexican side to the American in the Real de San Lorenzo, adjoining this town. On Nov. 9th following you wrote Mr. Blanco declining to examine the petition believing that it must be held subject to the banco treaty, then under consideration. On Dec. 19th, of the same year, in Joint Session of the Commission the Mexican Commissioner insisted that it be settled and presented a note from the Minister of Relations of Mexico, dated Nov. 15th, of that year, relative to the same question, obtaining from you as a reply a renewal of your refusal to discuss and decide upon it.

On Sept. 20, 1899, the Jefe Politico of Ciudad Juarez presented to the Mexican Commissioner a complaint similar to the previous

one and mentioning certain other land cut off by the Rio Grande from the Real de San Lorenzo not mentioned by Señor Basave, but by five different persons. Said esteemed Commissioner, refrained from submitting it to you in view of your former decision, although this complaint and the previous one were the same, but I think it convenient to attach here a copy of said complaint, and marked No. 1, pp. 1 and 2.

Later on, in June 17, 1902, Mr. Blanco wrote you a note enclosing copy of a communication from the Secretary of Relations of Mexico, referring to a petition made by 31 Mexican citizens, proprietors of land on the banks of the Rio Grande in the Real de San Lorenzo, and presenting it formally for the study of the Joint Commission. In this letter Mr. Blanco thought it well to state to you that in his opinion the land referred to in this complaint was the same as mentioned in the two previous complaints. In June of the same year he wrote you offering to take up the question with the Department of State and work according to the instructions that might be received on the matter. In our archives this is the last note exchanged between the Commissioners respecting this case (or the cases for I am not sure there is only one) to which I have referred.

I have given you the necessary data in order that the different complaints will explain the points referred to in them and I am disposed to go over them in your company on the day and hour most convenient to both of us.

Very respectfully,

FERNANDO BELTRÁN Y PUGA,
Mexican Commissioner.

[Enclosure No. 1, p. 1.]

On the margin a seal with the national arms which says: Jefatura Politico, Distrito de Bravos, Chihuahua, No. 1418.

In compliance with Article IV of the convention between the United States and Mexico of March 1, 1889, I have the honor to transmit to you, for appropriate action, certified copy of a complaint, dated the 14th instant, which was presented to me today and which was signed by Messrs. Guadalupe Gómez, Plácido Zambrano, Martín Gómez, Félix Lucero, Rosalía Colmenero Vda. de Valencia, y Zeferino Carbajal, in which they explain that by reason of the change in the channel of the Rio Grande caused by

the floods of 1897 and 1898 a large portion of their land located in the Real de San Lorenzo was left on the American side.

I renew to you the assurance of my attentive consideration.

Liberty and Constitution.

Ciudad Juarez, September 20, 1899.

E. J. P.

(Firmado) V. OÑATE,

Rúbrica.

To Mr. Jacobo Blanco, Chief of the Mexican Boundary Commission.

A copy:

EL PASO, TEXAS, *Nov. 8, 1907.*

[Enclosure 1, p. 2.]

On the margin a seal with the national arms which says: Jefatura Politica del Distrito de Bravos, Chihuahua, Num. ——.

On the margin a fifty-cent stamp, duly cancelled.

"C. Jefe Politico:

Zeferino Carbajal, Martín Gómez, Plácido Zambrano, Félix Lucero, Guadalupe Gómez y Rosalía Colmenero Viuda de Valencia, before you with the greatest respect state: That they are the legitimate owners of some lands located in the Real de San Lorenzo of this district, as shown by the authenticated titles; that these lands before the floods of the Rio Grande of 1897 and 1898 were situated on the right bank of the river, that is, in Mexican territory, and that owing to the change or alteration in the channel a great portion of said land was transferred to the American side, for which reason and in virtue of Article IV of Section I of the Convention of Nov. 12, 1884, between the United States and Mexico, we request you, C. Jefe Politico, that you notify the Mexican Commissioner, Mr. Blanco, of El Paso, Texas, in order to conform to said convention and enable him to proceed according to law. Protesting to you our acknowledgment. Ciudad Juarez, Sept. 14, 1899. Guadalupe Gómez, Martín Gomez. At request of Félix Lucero, Guadalupe Carbajal. At request of Plácido Zambrano, Manuel E. Flores. At request of Zeferino Carbajal, Manuel E. Flores. At request of Rosalía Colmenero Viuda de Valencia, José Ortiz de Montellano. Their seals.

A copy of the original certified in Ciudad Juarez the 20th of September, 1899. (Signed) J. M. Varela, Scrio. Seal.

A copy.

EL PASO, TEXAS, *November 8, 1907.*

[Acta]

EL PASO, TEXAS, *Noviembre 18 de 1907.*

La Comisión Mixta se reunió á las 3 P. M. en la oficina de su Sección mexicana.

El Comisionado de México presentó al de los Estados Unidos una carta fechada el día 18 de Noviembre de 1907, acompañada de dos anexos, abriendo de nuevo cierto caso relativo á la segregación por el Río Grande, en sus crecientes de 1897 y 1898, de unos terrenos que estaban antes de ellas en el Real de San Lorenzo, cerca de Ciudad Juárez, Chihuahua, México, caso que ya había sido antes discutido en una sesión de la Comisión Mixta del día 19 de Diciembre de 1898.

El Comisionado americano aceptó formalmente esa carta y se acordó que se anexara en copia é esta Acta.

Sin más discusión, se convino en que los Comisionados visitarán mañana, día 19, el sitio del cambio en cuestión y harán de él el examen personal que requieren los Tratados.

Enseguida se levantó la sesión.

Comisión Internacional de Limites entre México y los Estados Unidos. Comisionado Mexicano.

Anexo al Acta de Noviembre 18 de 1907.

CAMBIO DEL BRAVO EN EL REAL DE SAN LORENZO.

EL PASO, TEXAS, *Noviembre 18 de 1907.*

Señor General ANSON MILLS,

Comisionado Americano de Límites,

Presente.

ESTIMADO SEÑOR:

Por medio de la presente nota respetuosamente me permito solicitar una decisión sobre el asunto que explico en seguida, que fue dejado pendiente de dictamen por nuestra Comisión desde hace varios años en espera de la promulgación del Tratado de Eliminación de Bancos. Habiéndose verificado ya ésta recientemente, ha desaparecido la causa del aplazamiento.

La historia del caso es como sigue:

El 31 de Octubre de 1898, mi antecesor, el señor Blanco, presentó á usted un oficio y un plano por medio de los cuales el Juez de Distrito de Ciudad Juárez, á nombre del señor Ingeniero Eduardo Prieto Basave, pedía que la Comisión determinara la nacionalidad de cierta extensión de terreno separada por el Río Bravo del lado mexicano hacia el americano, y situado, según el plano lo indica, en el Real de San Lorenzo, cercano á esta población. En Noviembre 9 siguiente contestó usted al señor Blanco rehusándose á examinar la petición por creer deber subordinarla al Tratado de Bancos entonces en gestión. En Diciembre 19 inmediato, en sesión mixta de la Comisión, insistió el Comisionado mexicano sobre el asunto y presentó una nota del Ministerio de Relaciones de México fechada el 15 de Noviembre anterior y relativa al mismo punto, obteniendo de usted como respuesta renovar su negativa á tratarlo y dictaminar sobre él.

En Septiembre 20 de 1899 presentó al Comisionado mexicano de Límites el Jefe Político de Ciudad Juárez, una queja análoga á la anterior y versando también sobre cierto terreno cortado por el Río Bravo del Real de San Lorenzo, pero no firmada por el señor Prieto Basave, sino por cinco diferentes personas. Dicho Comisionado estimó, sin embargo, que esta queja y la anterior eran una misma y se abstuvo de transmitirla á usted en vista de su decisión mencionada; pero creo conveniente incluir aquí copia de dicha queja en el Anexo N° 1, páginas 1 y 2.

Por último, en Junio 17 de 1902 escribió á usted el señor Blanco una nota, incluyéndole copia de una comunicación de la Secretaría de Relaciones de México, referente á una solicitud hecha por 31 ciudadanos mexicanos propietarios de terrenos en las márgenes del Río Grande en el Real de San Lorenzo, y presentándola formalmente al estudio de la Comisión mixta. En la misma carta creyó conveniente el señor Blanco indicar á usted que en su opinión el terreno á que se refería esta última queja era el mismo de las dos anteriores. En Junio 25 del mismo año contestó usted á dicho señor ofreciéndole tratar el asunto con el Departamento de Estado y obrar de acuerdo con las instrucciones que de él recibiera sobre el particular. En nuestros archivos es ésta la última nota cambiada entre los Comisionados respecto al caso (ó á los casos, pues no estoy seguro de que sea uno solo) á que me vengo refiriendo.

He dado ya los pasos necesarios para que los diversos quejosos nos muestren los puntos á que se refirieron sus ocursos, y estaré

dispuesto á recorrerlos en compañía de usted en el día y á la hora más convenientes para ambos.

De usted muy atentamente,

(Firmado) F. B. PUGA,
Comisionado Mexicano.

Es copia.

EL PASO, TEXAS, *Noviembre 18 de 1907.*

CÉSAR CANSECO,
Secretario Mexicano.

Acta de Noviembre 18 de 1907.

Anexo N° 1. Página 1. (carta de Nov. 18 de 1907)

Al márgen un sello con el escudo nacional que dice:—Jefatura Política.—Distrito Bravos.—Chihuahua.—Núm. 1418

En cumplimiento de lo prevenido en el artículo IV de la Convención que celebraron México y los Estados Unidos en 1ro. de Marzo de 1889, tengo el honor de remitir á Ud., para los efectos á que hubiere lugar, copia certificada de un Ocurso fecha 14 del actual que me fue presentado hoy y que firman los señores Guadalupe Gómez, Plácido Zambrano, Martín Gómez, Félix Lucero, Rosalía Colmenero Vda. de Valencia, y Zeferino Carbajal, en el cual exponen que, con motivo del cambio ocurrido en el cauce del Río Bravo y ocasionado por las crecientes habidas en los años de 1897 y 1898, una gran parte de los terrenos de su propiedad ubicados en el Real de San Lorenzo quedó del lado americano.

Renuevo á Ud. las seguridades de mi atenta consideración.

Libertad y Constitución.

Ciudad Juárez, Septiembre 20 de 1899.

E. J. P.

(Firmado) V. OÑATE,
Rúbrica.

Al Señor Ingeniero Jacobo Blanco, Jefe de la Comisión Mexicana de Límites.

El Paso, Texas.

Es copia.

El Paso, Texas, Noviembre 8 de 1907.

CÉSAR CANSECO
Secretario Mexicano.

Acta de Noviembre 18 de 1907.

Anexo N° 1. Página 2. (Carta de 18 de Nov. de 1907.)

Al márgen un sello con el escudo nacional que dice:—Jefatura Política del Distrito de Bravos.—Chihuahua.—Núm.

Al márgen una estampilla de á cincuenta centavos debidamente cancelada. "C. Jefe Político:—

Zeferino Carbajal, Martín Gómez, Plácido Zambrano, Félix Lucero, Guadalupe Gómez y Rosalía Colmenero Viudad de Valencia, ante Ud. con el debido respeto exponen: que son dueños legítimos de unos terrenos que se hallan ubicados en el Real de San Lorenzo de este Distrito, como consta por los títulos que obran en su poder.—Que estos terrenos, antes de las crecientes del Río Bravo del Norte de los años de 1897 y 1898, se hallaban situados en la margen derecha de dicho río, esto es, en territorio mexicano; y que debido al cambio ó alteración en el cauce, cambió gran parte de dichos terrenos al lado americano.—Por tal motivo, y en virtud del Art. IV de la Sección I de la Convención entre los Estados Unidos Mexicanos y los Estados Unidos de América del 12 de Noviembre de 1884, hemos de merecer á Ud. C. Jefe Político se sirva notificar este hecho al Comisionado mexicano, Señor Don Jacobo Blanco, en El Paso, Texas, para que conforme á dicha Convención se sirva este señor proceder como haya lugar en derecho.—Protestamos á Ud. señor Jefe Político, nuestro reconocimiento.—Ciudad Juárez, Septe. 14 de 1899.—Guadalupe Gómez.—Martín Gómez.—A ruego de Félix Lucero.—Guadalupe Carbajal.—A ruego de Plácido Zambrano.—Manuel E. Flores.—A ruego de Zeferino Carbajal.—Manuel E. Flores.—A ruego de Rosalía Colmenero Viudad de Valencia.—José Ortiz de Montellano.—Sus rúbrica. Es copia de su original que certifico en Ciudad Juárez, á los veinte días del mes de Septembre de mil ochocientos noventa y nueve.—Firmado.—J. M. Varela. Serio.—Rúbrica.

Es copia:

El Paso, Texas, Noviembre 8 de 1907.

CÉSAR CANSECO,
Secretario Mexicano.

[Joint Journal]

EL PASO, TEXAS, *November 22, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 9 A. M.

As agreed in the Journal of the 18th instant the Commissioners visited and made an examination of the land affected by the change in the Rio Grande in 1898, and referred to in the letter and enclos-

ures presented by the Mexican Commissioner in reopening this case.

It was agreed that E. Sambrano; Leigh Clark; John N. Cordova, and Geo. W. Huffman, be summoned to appear before the Joint Commission at 10 o'clock A. M., tomorrow, the 23d instant, to be questioned as to their knowledge of the manner in which the change occurred.

The Commission then adjourned.

[Acta]

El Paso, Texas, Noviembre 22 de 1907.

La Comisión Mixta se reunió en la oficina de su Sección mexicana á las 9 a. m.

Como se convino en el Acta del día 18, los Comisionados visitaron y examinaron el terreno afectado por el cambio hecho por el Río Grande en 1898, al cual se refieren la carta presentada por el Comisionado mexicano al recibir el caso, y los anexos á ella adjuntos.

Se acordó citar ante la Comisión, para mañana 23 á las 10 a. m. á E. Zambrano, Leigh Clark, John N. Cordova y Geo. W. Hoffman, á quienes se interrogará acerca de la manera conque ocurrió el cambio.

Enseguida se levantó la sesión.

[Joint Journal]

El Paso, Texas, November 23, 1907.

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

All the persons directed to be summoned by the Commissioners yesterday were present, except Mr. Geo. W. Huffman, who was absent from the city. Mr. John N. Cordova was excused after explaining that his summoning was evidently a mistake.

Mr. Clark and Mr. Sambrano, after being duly sworn, testified, upon examination by the American Commissioner, as follows:

TESTIMONY OF MR. CLARK.

Q. What is your name, where do you reside, and what is your occupation?

A. Leigh Clark; El Paso, Texas; an attorney at law.

Q. The Commission is considering the question of change in the channel of the Rio Grande affecting the national boundary at a point commonly known as the San Lorenzo Banco, about four miles below the city of El Paso. The question before us for decision is whether this change took place by gradual erosion and

deposit or by avulsion. It is understood you own land in the vicinity of this banco, if you have any personal knowledge as to the manner of the change that would enlighten the Commission in its consideration we would be pleased to have you inform us.

A. I have not.

TESTIMONY OF MR. SAMBRANO.

Q. What is your name; where do you reside, and what is your occupation?

A. E. Sambrano; on the County road; a pawnbroker.

Q. Do you know the difference between the terms "gradual erosion and deposit" and "avulsion" as applied to the changing of a stream?

A. I do not.

Q. Do you desire to bring testimony to dispute or protest against the findings of the engineers in this case?

A. I do not.

Q. The change in the river is alleged to have been made in 1898. Have you any knowledge of the river at that date?

A. No, sir.

Mr. W. W. Turney, an attorney of El Paso, Texas, representing an American claimant to part of the land in question, was introduced by Mr. Clark, and examined the report and map of the engineers.

Adjournment was then taken until 10 o'clock A. M., November 26th, when the consideration of the case will be resumed.

[Acta]

EL PASO, TEXAS, *Noviembre 23 de 1907.*

La Comisión Mixta se reunió á las 10 a. m. en la oficina de la Sección mexicana, estando presentes todas las personas á quienes se citó ayer con excepción del señor Hoffman que no se halla en la ciudad.

El Señor John N. Cordova fue excusado de permanecer por haberse aclarado que la cita que se le hizo obedeció á una equivocación.

Debidamente juramentados los señores Clark y Zambrano, rindieron á preguntas del Comisionado americano los siguientes testimonios:—

DECLARACIÓN DEL SEÑOR CLARK:—

P. Cuáles son el nombre, la residencia y la ocupación de usted?

R. Leigh Clark; El Paso, Texas; abogado.

P. La Comisión tiene en estudío un cambio del Río Grande que afecta á la línea divisoria internacional en un lugar conocido

por "Banco de San Lorenzo", como quatro millas abajo de El Paso, y la cuestión que vamos á decidir es si dicho cambio se produjo por erosión y depósito graduales ó por avulsión. Entendemos que usted posee terrenos en la vecindad de ese "banco" y desearíamos que nos informara de si tiene algún conocimiento personal que pueda ilustrar á la Comisión acerca de la naturaleza del cambio.

R. No lo tengo.

DECLARACIÓN DEL SEÑOR SAMBRANO:—

P. Cuáles son su nombre, residencia y ocupación?

R. E. Sambrano; junto al camino del Condado; giro una casa de préstamos.

P. Sabe usted la diferencia entre los términos "erosión y depósito graduales" y "avulsión", según se les aplica á los cambios de un río?

R. No.

P. Desea usted presentar algún testimonio discutiendo las conclusiones de nuestros Ingenieros en este caso, ó protestando contra ellas?

R. No.

P. Se alega que el cambio del río se verificó en 1898:—¿ sabe usted algo sobre dicho río en tal época?

R. No.

Á continuación fue presentado por el señor Clark el señor W. W. Turney, Abogado de El Paso y apoderado de una de las personas interesadas en el terreno en cuestión, á quien se le permitió que examinara los plenos y el informe relativos á este banco.

Se aplazó la sesión para las 10 a. m. del día 26 de Noviembre, que será cuando se continúe la vista del caso.

[Joint Journal]

EL PASO, TEXAS, *November 26, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

Mr. Leigh Clark introduced Messrs. J. W. Eubank and G. W. Huffman and requested that they be examined by the Commissioners.

TESTIMONY OF J. W. EUBANK.

Examination by American Commissioner.

Q. What is your name; where do you reside, and what is your occupation?

A. J. W. Eubank; 805 Montana Street, El Paso, Texas; County Surveyor.

The Commission is considering the question of change in the channel of the Rio Grande affecting the national boundary at a

point commonly known as the San Lorenzo Banco, about four miles below the city of El Paso. The question before us for decision is whether this change took place by gradual erosion and deposit or by avulsion. Have you any personal knowledge as to the manner of the change which would enlighten the Commission in its consideration of the case?

A. In 1886 to 1888 I was County Surveyor and I had occasion to make a survey of the land that lies north of the abandoned channel, as shown on the map. That was about June, 1887. That is known as the Bennett survey. I found the distance from the canal to this abandoned channel to vary from 300 varas on some of the lines to 200 varas on others. I found the river about approximately where it is shown on the map before me by the abandoned bed, as I recollect it, and it was in that position in 1889. I had charge of this canal and was chief engineer and had charge of the canal when the present Franklin Irrigation Canal was built. I left here in 1890 and did not return until 1900 to do any work. The next surveying I did I found the river down in its present channel and I do not know of my own knowledge whether it went from its old bed suddenly or by erosion.

Q. When you saw the river in 1887 and 1889 had you then any knowledge at all of any other branch of the river running in the vicinity of its present channel?

A. I do not know. I only surveyed north of the channel and did not go to see.

Examination by the Mexican Commissioner:

Q. Why did you stop your survey at the north bank?

A. The river was running there. It was running at full force.

Q. When you made your survey, did you see any signs of a change of the river towards Mexico, such as sand bars or otherwise?

A. The banks were full of water and I saw no sign of sand bars.

TESTIMONY OF G. W. HUFFMAN.

Examination by American Commissioner.

Q. What is your name; where do you reside, and what is your occupation?

A. G. W. Huffman; Ysleta; County Tax Assessor.

Q. The Commission is considering the question of change in the channel of the Rio Grande affecting the national boundary at a point commonly known as the San Lorenzo Banco, about four miles below the city of El Paso. The question before us for decision is whether this change took place by gradual erosion and deposit or by avulsion. Have you any personal knowledge as to the manner of the change which would enlighten the Commission in its consideration of the case?

A. The first knowledge I had of that particular part of the river, I think, was in 1889. In 1890 or 1891, I do not remember the exact year, the city of Ysleta by suit secured title to 296 acres

of land just below this tract described upon the map. I bought from the city their interest in that 296 acres, which I think was a half interest. Messrs. Brock, Clardy and Neal getting the other half as attorneys' fees in the case. There was a survey made of that tract of land in 1889, I think, and at the time the survey was made I went down and tried to go around the tract of ground on which the survey was made, and my recollection is that the river at that time is just about as Mr. Eubank has stated to you and shown on the map. Now in 1891 or 1892, myself and part-owners had the surveyor go down there and show us approximately the corners, as near as he could find them, of the tract we had secured. At that time my recollection is that (the river was then way over in Mexico—quite a distance) the river was going south of the land below this tract, and on the upper end, towards the east—and that there was quite a number of little sand bars formed where the river seemingly threw or washed the channel towards this side.

Q. I would like to know if you have any knowledge of the change in the river; the abandoning of the old bed and opening of a new one, as represented on the map?

A. I do not.

Examination by Mexican Commissioner.

Q. You say that when you bought this land from the city of Ysleta the river was the southern limit of the tract?

A. Yes, it ran to what was supposed to be the north bank or the left bank, going down stream.

Q. You stated that some time after the change an effort was made to locate the corners. Am I correct?

A. Yes. No new survey was made, but the former surveyor went to the land and endeavored to show as near as possible where he had formerly located the corners.

Q. Were the corners, as relocated by him, on the bank of the now abandoned channel?

A. The corners, as I remember, as pointed out by the surveyor, were near the bank of the channel that is now abandoned, but the river appeared to have gone south and some of the locations were not near the water's edge.

The Commission then adjourned.

[Acta.]

EL PASO, TEXAS, *Noviembre 26 de 1907.*

La Comisión Mixta se reunió en la oficina de su Sección mexicana á las 10 a. m.

El señor Leigh Clark presentó á los señores J. W. Eubank y G. W. Huffman y solicitó que tomaran su testimonio los Comisionados.

DECLARACIÓN DE J. W. EUBANK.

Interrogatorio del comisionado americano.

P. Diga usted su nombre, residencia y ocupación.

R. J. W. Eubank; Calle de Montana, 805, El Paso, Texas; Agrimensor del Condado.

P. La Comisión está estudiando un cambio de cauce del Río Grande que afecta á la línea divisoria internacional en un lugar comúnmente designado por "Banco de San Lorenzo", como cuatro millas abajo de El Paso, y la cuestión que debemos decidir es si tal cambio se produjo por erosión y depósito graduales ó por avulsión:—¿puede usted ilustrar en la materia á esta Comisión con algunos conocimientos personales suyos sobre la manera conque se efectuó el cambio?

R. Fuí Agrimensor del Condado de 1886 á 1889 y tuve ocasión de levantar el plano del terreno que está al Norte del lecho viejo que se muestra en el plano de la Comisión, lo cual tuvo lugar por Junio de 1887, levantamiento que se conoce con el nombre de "Mensura de Bennett". La distancia que encontré del canal al cauce abandonado del río variaba de 300 á 200 varas. El río estaba entonces aproximadamente endonde ahora se ve en el plano de ustedes el lecho abandonado, hasta donde puedo recordar, y en esta posición se conservaba aún en 1889. Tuve á mi cargo, como Ingeniero en Jefe, el canal que construyó la actual "Franklin Irrigation Canal Co." Me marché en 1890 y no volví á trabajar aquí sino hasta 1900, y en el levantamiento siguiente que hice me encontré ya al río en su actual posición, sin que sepa si dejó su antiguo cauce repentinamente ó por erosión.

P. ¿Supo usted en 1887 y en 1889, cuando vió el río, que hubiera otro brazo del mismo corriendo cerca de la posición que hoy ocupa?

R. No; solamente levanté lo que estaba al Norte de él y no fui nunca á ver.

Interrogatorio del comisionado mexicana.

P. ¿Porqué suspendió usted su levantamiento en la margen Norte del río?

R. Porque el agua estaba entonces corriendo por él con gran fuerza.

P. Cuando hizo usted su levantamiento ¿observó algunas señales que indicaran un cambio del río hacia México, tales como barras de arena ú otras?

R. El cauce estaba entonces lleno de agua y no ví ninguna traza de playas de arena.

DECLARACIÓN DE G. W. HUFFMAN.

Interrogatorio del comisionado americano.

P. Diga usted su nombre, residencia y ocupación.

R. G. W. Huffman; Ysleta, Texas, Recaudador de Contribuciones del Condado.

P. La Comisión está estudiando un cambio de cauce del Río Grande que afecta á la línea divisoria internacional en un lugar comúnmente designado por "Banco de San Lorenzo", como cuatro millas abajo de El Paso, y la cuestión que debemos decidir es si tal cambio se produjo por erosión y depósito graduales ó por avulsión:—¿puede usted ilustrar en la materia á esta Comisión con algunos conocimientos personales suyos sobre la manera conque se efectuó el cambio?

R. Creo que en 1887 fue cuando tuve conocimiento por primera vez de este terreno particular abajo de El Paso. En 1890 ó 1891, no recuerdo la fecha exacta, la ciudad de Ysleta ganó en un litigio la propiedad de 296 acres de tierra precisamente abajo del tramo descrito en el plano de ustedes, y yo compré á la ciudad el derecho que obtuvo á la mitad de los 296 acres, habiéndosele cedido la otra mitad de ellos, en calidad de honorarios de abogado, á los señores Brock, Clowdy y Neal. En 1889 se hizo según recuerdo un levantamiento de aquel tramo de terreno y entonces fui yo allá y procuré recorrer su contorno, y recuerdo que el río estaba entonces precisamente endonde el señor Eubank ha dicho, que es endonde lo muestra el plano de ustedes. En 1891 ó 1892 yo y los demás propietarios hicimos que fuera allá el agrimensor á mostrarnos aproximadamente las señales de ángulo que pudiera encontrar en el terreno comprado por nosotros, y me acuerdo de que entonces el río, que se encontraba ya á cierta distancia abajo de nuestro lote se estaba moviendo hacia el Sur en esta parte y hacia el Este en su extremidad superior habiendo dejado en esos dos lados numerosas playas de arena, que se formaban al parecer endonde el río se retiraba hacia México.

P. Desearía saber si usted tiene algún conocimiento del cambio del río—de su abandono del antiguo cauce y de la apertura de uno nuevo—según se describe en el plano.

R. No lo tengo.

Interrogatorio del comisionado mexicano.

P. ¿Dice usted que cuando compró ese terreno á la ciudad de Ysleta, el río era su límite Sur?

R. Si. Estaba en lo que se suponia ser la ribera Norte, ó margen izquierda del río.

P. ¿Afirmó usted que algún tiempo después del cambio se intentó localizar las señales de ángulo? Estoy en lo cierto?

R. Si. No se practicó un nuevo levantamiento, sino que el agrimensor que había estado allá anteriormente fue al terreno y procuró mostrar lo más aproximadamente posible los puntos endonde había localizado las referidas señales de ángulo.

P. ¿Estaban esas señales de ángulo, según la nueva localización del agrimensor, sobre la margen del cauce ahora abandonado?

R. Según recuerdo, las señales de ángulos indicadas por el agrimensor estaban cerca de la ribera del cauce que ahora ha quedado abandonado, pero parecía que el río se había movido

hacia el Sur, pues las posiciones de algunas de aquellas no estaban cerca de la orilla del agua.

Enseguida se levantó la sesión.

[Joint Journal.]

EL PASO, TEXAS, *November 27, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10.30 o'clock A. M.

Judge T. A. Falvey, Mr. W. B. Latta, Mr. Robert Krakauer and Mr. Geo. B. LeBaron, American contestants, after having gone over the reports and maps with the American Consulting Engineer, appeared before the Joint Commission. At the suggestion of the American Commissioner that one of their party be selected to do the talking Judge Falvey stated that he would represent the American contestants during the hearing.

Judge Falvey then stated that they were taken by surprise in this case and requested that the Commission delay its consideration that they might introduce witnesses, affidavits and interrogatories.

After considerable discussion the American Commissioner, speaking for the Commission, informed the contestants that the Consulting Engineers had submitted their report, together with a number of maps made by different scientific engineers of both nations, showing progressively over a period of fifty years the formation of this land by accretion and the avulsive cut-off in 1898 of some 400 acres of same, the engineers expressing the opinion that it was without question a banco formed by avulsive action, and this report, together with a personal examination by the Commissioners of the land in question, established beyond a reasonable doubt that this change came within that class of bancos to be eliminated under the provisions of the treaty of 1905, but if the American contestants could produce evidence to the contrary of such a character as would controvert the evidence submitted by the engineers, i. e. a preponderance of similar maps and scientific opinion, they would be pleased to hear it, but they did not care to hear affidavits, interrogatories or oral testimony on that subject from unscientific witnesses.

Judge Falvey, speaking for the contestants, stated that while he did not think they were prepared to controvert the facts established by the engineers that there had been an avulsive change in 1898, they were of the opinion and thought they could establish a prior counter-avulsive change in 1897.

They were informed by the Commissioners that they considered it very problematical that even if such a change had taken place it could be conclusively proven, but if the attorney for the American contestants would write out a definite petition in few words stating that they desired to prove a prior counter avulsive change and giving specific dates and facts to substantiate same the Commission would refer such petition to the Joint Consulting Engineers and request that they give an opinion as to whether such prior avulsive change could have taken place, and if they express the opinion that there was even the probability of such change the Commissioners would hear the evidence of competent scientific witnesses, with maps, tending to prove such avulsion, but that they would hear only such evidence as was competent.

Whereupon Judge Falvey, on the part of the American contestants, agreed to send in immediately, in the afternoon, a short petition to that effect.

The Commission then adjourned.

[Acta.]

EL PASO, TEXAS, *Noviembre 27 de 1907.*

La Comisión Mixta se reunió á las 10.30 a. m. en la oficina de su Sección mexicana.

Previamente enterados de los planos y de los Informes de la Comisión Mixta, se presentaron ante ella el abogado F. A. Falvey y los señores W. B. Latta, Roberto Krakauer y G. B. Le Baron, querellantes americanos en el caso, y habiendo iniciado el Comisionado americano que uno solo de entre ellos fuera designado para llevar la parabra, el abogado Falvey declaró que él representaría á dichos litigantes americanos durante la audiencia.

El abogado Falvey dijo que este caso les ha tomado por sorpresa y pidió que la Comisión aplazara su estudio de él hasta que pudieran presentar sus testigos, declaraciones é interrogatorios.

El Comisionado americano, á nombre de la Comisión y despues de discusión madura, informó á los opositores de que los Ingenieros Consultores han rendido un Informe que ilustran con numerosos planos hechos por diversos ingenieros titulados de ambas Naciones, en los cuales se muestra la formación progresiva por acreción, realizada en los últimos cincuenta años, del terreno en disputa, y en ese Informe opinan que se trata indudablemente de un banco determinado por un procedimiento avulsivo. De dicho documento, así como del examen personal del terreno practicado por los Comisionados, resulta fuera de toda duda sensata que este case de cambio entra en la categoría de bancos eliminables en virtud

del Tratado de 1905; pero, no obstante, si los soponentes americanos pueden ofrecer pruebas en contra de tal clasificasión, los Comisionados están dispuestos á escucharlas, siempre que sean de tal naturaleza que basten á destruir las presentadas por los Consultores, esto es, que deben consistir en planos y opiniones científicas análogos á los de los Ingenieros, pero de mayor fuerza que ellos, pues están decididos ambos Comisionados á no admitir en la materia testigos, declaraciones ó interrogatorios de personas no-científicas.

El abogado Falvey, á nombre de los oponentes, expuso que no estaban en disposición de objetar los hechos establecidos por los Consultores en cuanto al cambio avulsivo de 1898; pero que alegaban y creían poder probar que hubo un previo cambio avulsivo en sentido opuesto en 1897.

Los Comisionados replicaron que consideran muy problemático que se pueda probar tal cambio, en caso de haberse efectuado; pero que si el representante de la parte americana les presenta por escrito una petición breve y precisa para que se les permita probar un previo cambio avulsivo en sentido opuesto, con datos y fechas suficientes para discutirla, tal petición será transmitida á los Ingenieros Consultores unidos para que éstos opinen si puede haberse efectuado ese primer cambio avulsivo, y que si los refeidos Consultores juzgan siquiera posible semejante cambio, los Comisionados accederán á recibir pruebas de la avulsión consistentes en planos y en testimonios de personas científicas competentes, pues no aceptarán testimonios de personas que no lo sean.

El abogado Falvey, á nombre de sus representados americanos, convino en presentar desde luego, en la tarde del mismo día de hoy, una breve petición á este efecto.

Se levantó la sesión.

[Joint Journal]

EL PASO, TEXAS, *November 29, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

The Commissioners directed that a copy of a letter from the following American contestants: Mrs. Allie D. Clardy, by W. W. Turney; W. B. Latta; Robert Krakauer; Louis Hammer; Geo. B. LeBaron; Leigh Clark and Felix Martinez, together with a copy of the reply of the Commissioners, be attached hereto and made a part of these proceedings.

The Commission then adjourned.

EL PASO, TEXAS, *Nov. 27, 1907.*

To the Honorable
The INTERNATIONAL (WATER) BOUNDARY COMMISSION,
El Paso, Texas.

GENTLEMEN:

We, the undersigned, are the owners of and interested in the ownership of Collingsworth Surveys Nos. Thirteen (13) and Fourteen (14), and Bennett's Surveys Nos. Eleven (11) and Twelve (12), situated about four miles more or less East of the Court House of the City of El Paso, Texas, said land being situated in El Paso County, Texas.

Not until Friday or Saturday of last week were the undersigned notified or had knowledge of the fact that your Honorable Commission would undertake to determine the question of boundary so as to affect said lands; that the first information given any of the undersigned that the Commission would consider and determine whether said lands were Mexican or American lands was on Saturday of last week, when the undersigned Leigh Clark ascertained that the Commission had the matter of said lands under consideration, when he notified the attorney for Mrs. Clardy and also notified Mr. W. B. Latta; that on said last mentioned day the said Leigh Clark stated to the Commission that personally he knew nothing as to where the channel of the Rio Grande was, prior to the year 1897, and that he could not personally testify because of the fact that he was not interested in said lands until after 1900, and knew nothing of the details concerning same.

The undersigned respectfully represent that since said day they have appeared before your Honorable Commission and have requested a reasonable length of time in which to procure testimony, documentary, record and oral, in order that they might present their case and claims to the Commission in an intelligent and succinct way, but that they were informed by the Honorable Commissioners that oral testimony, or the testimony of living witnesses familiar with the facts and the changes of the river for many years last past, would not be considered by the Commission nor would evidence in the shape or form of affidavits made by said witnesses be considered, and that they were informed by the Commission that it would take conclusive testimony and evidence on the part of the undersigned, of a documentary nature, to overthrow the opinion then and now entertained by the Commission, and that such evidence should be produced at once, or within a few hours; that in the nature of things it would be impossible

within so short a time for the undersigned or their counsel to procure and formulate testimony to substantiate their contention as to the location of said lands with reference to the International boundary, but that they could do so if given thirty (30) days time from this date, which time they respectfully request, in order that they may present the facts as they believe and are informed exist, and which will show that the land comprised by said surveys and all of the land lying south of said surveys and the channel of the present river, is, and has been, for many, many, years last past, American land, and it is not now and never has been territory of the Republic of Mexico.

These claimants and those under whom they claim and those from whom they purchased have been in actual, peaceable and adverse control and possession of all of said surveys of land and all parts of same, using, occupying and cultivating said lands or portions thereof, as said surveys were originally platted upon the ground and patented by the State of Texas, for more than (40) forty years last past, all of which facts and claims, the undersigned, if given the opportunity, will be able to establish, they believe, to the entire satisfaction of your Honorable Commission.

The surveys above mentioned form a part of what we understand is characterized by the Commission as being the "Banco de San Lorenzo".

We were informed at this morning's session by your Honorable Commission, for the first time, that the Mexican claimants to this land had filed their claim with this Honorable Commission nine (9) years ago, but the undersigned assure this Commission that none of them had received any notice, either personally or by publication, from these claimants, this Commission, or any other source, of said adverse claims, until the said claims were ascertained by the said Leigh Clark on last Saturday, the twenty-third (23rd) day of November, nor were they aware of the fact that there was an adverse claim, by individuals or by the Republic of Mexico to said lands, notwithstanding the fact that they, and the parties from whom they purchased have been, for the last nine (9) years, and long prior thereto, the holders of the record title to said surveys and actually paying taxes thereon.

The undersigned respectfully represent that the land owned by them collectively is of great value to them, and they feel that they should be granted an opportunity to show and establish the fact that said land is not now and never was Mexican territory.

They therefore respectfully request that they be given a reasonable time in which to procure and present evidence in proof of the facts above set forth, and they suggest that thirty (30) days be the minimum time in which they can be prepared to present their case.

The undersigned further respectfully request the Honorable Commission to advise them in writing whether they will be given the time requested to make said preparation and to present the facts as above set forth, and if the Commission will not give them the time requested, the undersigned ask to be notified in writing what time, if any, the Commission will grant them.

Respectfully submitted.

Mrs. Allie D. Clardy,
by W. W. Turney,
W. B. Latta,
Robert Krakauer,
Louis Hammer,
Geo. B. Le Baron,
Leigh Clark,
Felix Martinez.

EL PASO, TEXAS, *November 29, 1907.*

Messrs. W. W. TURNEY, (representing Mrs. Allie D. Clardy), W. B. LATTA, ROBERT KRAKAUER, LOUIS HAMMER, GEO. E. LEBARON, LEIGH CLARK, and FELIX MARTINEZ.

GENTLEMEN:

The Joint Commission begs to acknowledge receipt of your communication of the 27th instant. We enclose you copy of our Joint Journal of November 27, 1907, by which you will observe that your communication is not such a petition as we understood we were to receive.

The Joint Commission wishes to be informed whether or not you desire to rely upon the claim set up by your representative, Judge Falvey, at the meeting of November 27, 1907, and spread on the Journal of that date, copy enclosed.

The Joint Commission will be in session at 10 o'clock tomorrow morning, November 30th, at the office of the Mexican Commissioner, Masonic Building, and will hear whatever you have to say in the matter.

Very respectfully,

ANSON MILLS,
American Commissioner,

F. B. PUGA,
Mexican Commissioner.

[Acta.]

EL PASO, TEXAS, *Noviembre 29 de 1907.*

La Comisión Mixta se reunió á las 10 a. m. en la oficina de su Sección mexicana.

Se recibió una comunicación de los siguientes opositores americanos:—Mrs. Allie D. Clardy, representada por W. W. Turney, W. B. Latta, Roberto Krakauer, Louis Hammer, G. B. Le Baron, Leigh Clark, y Félix Martínez, y se acordó adjuntar á esta Acta una copia de ella y otra de la contestación que le dieron los Comisionados.

Se levantó la sesión.

Anexo el Acta de Noviembre 29 de 1907.

EL PASO, TEXAS, *Noviembre 27 de 1907.*

Á la Honorable
COMISIÓN INTERNACIONAL DE LÍMITES FLUVIALES,
El Paso, Texas.

SEÑORES:—

Los infrascritos somos propietarios unos, y estamos interesados otros, en unos terrenos comprendidos en las mensuras (13) y (14) de Collingsworth y (11) y (12) de Bennett y situados en el Condado de El Paso, Texas, como cuatro millas al Este de la Casa de Corte de esta ciudad.

No ha sido sino hasta el viernes ó sábado últimos cuando se nos notificó ó tuvimos conocimiento de que la Honorable Comisión se está ocupando de definir la frontera sobre los terrenos citados, pues nuestra primera noticia de que la Comisión pensaba determinar si éstos son mexicanos ó americanos nos la dio el sábado último el infrascrito Leigh Clark, quien la comunicó al abogado de la señora Clardy, y á W. B. Latta después de que el mencionado Leigh Clark había ya manifestado ante la Comisión que él no tenía ningún conocimiento personal de la locación del Río Grande antes de 1897 y que no deseaba rendir ningún testimonio en el caso, por no haber adquirido ningún interés en el terreno en disputa sino después de 1900, debido á lo cual no conocía ningunos detalles sobre la materia.

Exponemos respetuosamente que de entonces á acá hemos comparecido los infrascritos ante la Honorable Comisión solicitando un plazo prudente para reunir el testimonio documentario ú oral necesario para someter al juicio de ustedes nuestro caso y nuestras pretensiones de un modo breve y claro, habiéndonos contestado á ello los Honorables Comisionados que no aceptarían

como pruebas las declaraciones orales de testigos supervivientes á los cambios sufridos por el río en años pasados, ni tampoco sus testimonios escritos juramentados, sino que sólo considerarían pruebas conclusivas las que consistieran en documentos de mayor peso que los que posee la Comisión, documentos que deberíamos presentar al momento ó dentro de unas cuantas horas.

En la naturaleza misma de las cosas radica la imposibilidad de que en tan breve plazo nosotros ó nuestros abogados reunamos y presentemos nuestras pruebas sobre la ubicación respecto á la Línea Internacional Divisoria que alegamos para los terrenos en cuestión, pero sí podríamos hacerlo dentro de treinta (30) días, á partir de esta fecha, y respetuosamente solicitamos ese tiempo para demonstrar que el terreno abarcado por las referidas mensuras, con todo el que está al Sur de ellas hasta el actual cauce del río, es y ha sido por muchísimos años americano, no estando ahora, ni habiendo estado nunca, en territorio de la República Mexicana.

Los infrascritos y las personas de quienes adquirimos nuestros títulos hemos estado por más de cuarenta (40) años en posesíon real, quieta, y pacífica de dichas mensuras y de todas sus partes integrantes, en la misma forma en que las concedió y definió el Estado de Tejas, usándolas, ocupándolas y cultivándolas en todo ó en parte, y creemos poder probar todo ésto á entera satisfacción de los Comisionados si se nos da una oportunidad para hacerlo.

Las mensuras á que nos venimos refiriendo forman parte de lo que la Comisión llama "Banco de San Lorenzo".

En la sesión de esta mañana supímos por primera vez que desde hace nueve (9) años tienen presentadas sus quejas ante la Comisión los pretendientes mexicanos de este terreno, pues aseguramos que por nuestra parte ninguno hemos recibido respecto á tales pretensiones notificación oral ó escrita ni de dichos reclamantes ni de la Comisión ó de alguna otra persona, siendo la primera la del mencionado Leigh Clark el veintitrés (23) de Noviembre último, debido á lo cual ignorábamos que existiera una reclamación mexicana pendiente, á pesar de que durante los últimos nueve (9) años, y aun antes, hemos poseido nosotros, ó las personas de quienes lo compramos, el título registrado de estas mensuras, y hemos pagado contribuciones por ellas.

Respetuosamente manifestamos que el terreno que colectivamente poseemos nos es de gran valor y que nos creemos con derecho á que se nos conceda probar que ni es, ni ha sido nunca, territorio

mexicano, por lo cual respetuosamente pedimos que se nos dé un plazo (que como mínimum debería ser de treinta (30) días) para reunir y presentar las pruebas en favor de los hechos expuestos y de nuestro caso, y solicitamos que la Honorable Comisíon nos diga por escrito si nos concederá dicho plazo ó, de no ser así, cuál es el tiempo que nos puede otorgar con el mismo fin.

Presentada con todo respeto.

(Firmada.) Por Mrs. Allie D. Clardy, W. W. Turney. W. B. Latta. Robert Krakauer. Louis Hammer. Geo. R. LeBaron. Leigh Clark (rúbrica). Félix Martínez (rúbrica).

Es traducción. EL PASO, TEXAS, Noviembre 29 de 1907.

CÉSAR CANSECO
Secretario Mexicano.

Anexo al Acta de esta fecha.

EL PASO, TEXAS, *Noviembre 29 de 1907.*

Señores W. W. TURNEY (representante de la Señora Allie D. Clardy); W. B. LATTA; ROBERT KRAKAUER; LOUIS HAMMER; GEO. B. LE BARON; LEIGH CLARK; y FÉLIX MARTÍNEZ.

SEÑORES:

La Comisión Mixta acusa á ustedes recibo de su comunicación del día 27 del actual, y les acompaña una copia de su Acta común de esa misma fecha, para que se sirvan notar que la comunicación antedicha no es la solicitud que esperábamos recibir.

La Comisión Mixta desea saber si ustedes pretenden insistir en la demanda elevada por su representante, el Juez Falvey, en la junta del día 27 de Noviembre de 1907, y que consta en el Acta de esa fecha, de que va copia adjunta.

La Comisión Mixta estará en sesión mañana, Noviembre 30, á las 10 a. m. en la Oficina del Comisionado mexicano, en el Edificio Masónico, y escuchará lo que tengan ustedes que decir sobre el particular.

Muy respetuosamente,

(Firmado)

ANSON MILLS.
Comisionado Americano.

F. B. PUGA,
Comisionado Mexicano.

Es Traducción.

CÉSAR CANSECO,
Secretario Mexicano.

[Joint Journal]

EL PASO, TEXAS, *November 30, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

There appeared Messrs. Leigh Clark, T. A. Falvey, Richard F. Burges and W. W. Turney, who presented an amended petition, copy of which is attached hereto and made a part of these proceedings.

The American Commissioner, speaking for both Commissioners, informed the contestants that the Commissioners would refer their petition to the Joint Consulting Engineers for a technical opinion.

Mr. Burges requested permission to make an oral explanation of their contention, but was informed that the Joint Consulting Engineers would be instructed to give due consideration to whatever maps, surveys, records and technical information as would be presented to them by the contestants or their attorneys.

Upon the retirement of the contestants the Commissioners addressed a joint letter to the Joint Consulting Engineers, enclosing them a copy of the petition of the contestants, of this date, and copy of the Joint Journal of November 26, 1907, embracing the testimony of J. W. Eubank and G. W. Huffman, all of which they were requested to take under consideration and render a joint report if they agreed, and separately if they disagreed, covering the technical points at issue.

Copy of said letter is attached hereto and made a part of these proceedings.

The Commission then adjourned.

EL PASO, TEXAS, *Nov. 30, 1907.*

To the Honorable

The INTERNATIONAL (WATER) BOUNDARY COMMISSION,

El Paso, Texas.

GENTLEMEN:

In reply to your communication of the 29th inst., the undersigned, representing the owners and those interested in the ownership of the Collingsworth Surveys and the Bennett Surveys, respectfully beg to say:

First: The time allowed by you, viz: until 10 o'clock A. M. November 30, 1907, in which they by you are required to present their case, is not sufficient.

It would be impossible for them to present in an intelligent way the various maps, field notes, affidavits, documentary evidence and oral evidence to intelligently sustain their claim to the land designated by you as the "Banco de San Lorenzo" within a less time than thirty (30) days.

In reply to your inquiry contained in the second clause of your letter of the above date, we beg to say:

That we most emphatically deny that the permanent channel of the river was at the place where Mr. Follett presumed it to be in 1897, from his inspection and survey made in 1899, and we further emphatically deny that the main channel of the river, for any considerable length of time, either before or subsequent to the year 1897 followed the course presumed by the Commission.

We further assert, as is not infrequently the case, that in 1897 the territory comprised within the confines of the "Banco de San Lorenzo", and territory South, West and East of it, was submerged by the flood of 1897, which flood was one of the greatest floods within the memory of the inhabitants of this county.

We are assured, from an investigation of the facts, that the river has, at various times occupied one half dozen or more different channels between the Northerly course indicated by the presumed river bed of 1897 and a point far South of the present channel. We will establish, beyond a reasonable doubt, if permitted to do so, and if given a reasonable opportunity to do so, that from shortly after the establishment of the International Boundary line, in 1852, the land included by you in the "Banco de San Lorenzo", was American territory and patented by the State of Texas to the persons through whom we claim. That during all of the time that has since elapsed, with brief temporary intermissions, due to changes wrought by the flood waters, said land has lain on the American side of the Rio Grande River and has been North of the permanent channel of the Rio Grande, and that said permanent channel was at least as far South as it is now.

We respectfully submit, that in the nature of things, the time requested by us in which to prepare and present our case to the Commission, can work no injury to the Mexican claimants and that we have no purpose in asking for the thirty days time except to enable us, as we feel that we should be allowed to do, to present our case and claim in the proper way.

Respectfully submitted.

MRS. ALLIE B. CLARDY,
By W. W. TURNEY.
FELIX MARTINEZ,
By RICHARD F. BURGES.
W. B. LATTA,
By T. A. FALVEY.
LEIGH CLARK.

EL PASO, TEXAS, *November 30, 1907.*

The JOINT CONSULTING ENGINEERS,
INTERNATIONAL BOUNDARY COMMISSION,
El Paso, Texas.

GENTLEMEN:

We beg to enclose herewith copy of a petition received from certain American contestants in the case of the "San Lorenzo Banco," also a copy of the Joint Journal of November 26, 1907, embracing the testimony of J. W. Eubank and G. W. Huffman in this case.

The Commissioners desire that the Consulting Engineers render a joint report if they agree, and separately if they disagree, covering the technical points at issue, using as a basis for their investigation copies of the following maps:

Emory-Salazar map of 1852;
The Heldt map of 1889;
The Follett map of 1899;
The Pani map of 1899, and the
Map of the Consulting Engineers of 1907.

You are also authorized to give due consideration to any other maps, papers, documents and technical information which you deem competent in the premises to enable you to solve the technical points involved.

The Commissioners anticipate that a great deal of irrelevant information will be offered to the Consulting Engineers, but nothing should be considered by you except that which has an actual bearing upon the technical points at issue.

The Consulting Engineers will not consider any information that may be presented unless both engineers are present.

Very respectfully,

ANSON MILLS,
American Commissioner.

F. B. PUGA,
Mexican Commissioner.

[Acta]

EL PASO, TEXAS, *Noviembre 30 de 1907.*

La Comisión Mixta se reunió á las 10 a. m. en la oficina de su Sección mexicana.

Se presentaron ante ella los señores Leigh Clark, F. A. Falvey, Richard F. Burges y W. W. Turney, quienes entregaron la solicitud modificada de que se anexa copia á esta Acta.

Después de haber sido leída por ambos Comisionados, el Comisionado americano, á nombre de la Comisión, informó á los ocursantes

de que se la transmitirán á los Ingenieros Consultores para que emitan sobre ella su opinión común profesional.

El señor Burges pidió permiso para hacer algunas explicaciones orales sobre la misma solicitud, y se le contestó que á los Ingenieros Consultores tocará, según instrucciones que se les van á dar, tomar en consideración los planos, levantamientos, expedientes, é informes técnicos que los opositores ó sus apoderados les presenten.

Luego que se hubieron retirado las mencionadas personas, los Comisionados dirigieron una carta en común á los Ingenieros Consultores, enviándoles en ella copias de la solicitud de hoy en cuestión y del Acta de la Comisión de Noviembre 26 de 1907, en la que figuran las declaraciones de J. W. Eubank y G. W. Huffman, y pidiéndoles que, teniendo todo esto en consideración, rindan sobre los puntos técnicos á discusión un Dictamen: común, si concuerdan en parecer, y por separado, en caso contrario. Se adjunta á esta Acta una copia de dicha carta.

Se levantó la sesión.

Anexo al Acta de esta fecha.

EL PASO, TEXAS, *Noviembre 30 de 1907.*

Á la Honorable
COMISIÓN INTERNACIONAL DE LÍMITES FLUVIALES,
El Paso, Texas.

SEÑORES:—

Contestando la comunicación de ustedes del día 29, los infrascritos, en representación de los propietarios de las mensuras "Collingsworth" y "Bennett" y de las demás personas interesadas en ellas, respetuosamente nos permitimos exponer que:—

Primero.—El plazo fijado por ustedes para que presentemos nuestro caso, esto es, hasta las 10 a. m. del día 30 de Noviembre de 1907, nos es insuficiente, pues nos sería imposible en un plazo menor de 30 días presentar de un modo conveniente los planos, notas de campo, testimonios y declaraciones, y las pruebas documentarias y orales con que demostraremos nuestras pretensiones sobre el terreno llamado por ustedes "Banco de San Lorenzo".

Respecto á la cuestión formulada en la segunda cláusula de la carta de ustedes, permítasenos decir que negamos del modo más categórico que el cauce del Río Grande haya estado en 1897 en la posición que le asigna el señor Follett valiéndose de su levantamiento de 1899, y que no menos categóricamente negamos que durante algún periodo de tiempo apreciable, antes ó después de 1897, haya seguido dicho río el curso que la Comisión le supone.

Aseguramos, sí, que en el año de 1897, como frecuentemente sucede, el terreno comprendido dentro de los límites del "Banco de San Lorenzo" y otros más que quedan al Sur, al Oeste, y al Este de él fueron inundados á causa de la avenida más grande de que conservan recuerdos los habitantes del Condado.

Estamos seguros, por nuestro estudio de los acontecimientos de que el río ha ocupado sucesivamente en diversas épocas seis ó más diferentes cauces entre el indicado hacia el Norte como supuesto río de 1897 y una posición muy al Sur del actual en curso.

Si se nos permite, y si se nos proporciona la debida oportunidad para hacerlo, demostraremos que poco después de establecida la Comisión de Límites de 1852 el terreno incluido por ustedes en el "Banco de San Lorenzo" estaba en territorio americano y que fue cedido por el Estado de Texas á las personas á quienes representamos; que dicho terreno ha estado siempre de entonces á acá en el lado americano del Río Grande y al Norte de su cauce permanente, con breves interrupciones debidas á cambios pasajeros causados por las avenidas; por último, que el cauce permanente del río ha estado siempre tan al Sur, por lo menos, como el actual.

Respetuosamente hacemos notar que, en vista del estado actual de las cosas, el plazo que solicitamos para preparar nuestro caso y presentarlo ante la Comisión no perjudicará á los reclamantes mexicanos, y manifestamos no tener otra mira al pedir los treinta días mencionados que poder presentar en la forma debida nuestro caso y nuestra pretensión, como creemos que se nos debe permitir hacerlo.

Sometemos la presente con todo respeto.

(Firmado) Por Mrs. Allie D. Clardy, W. W. Turney.—Por Félix Martínez, Richard F. Burges.—Por W. B. Latta, T. A. Falvey.—Leigh Clark.

Es traducción.

CÉSAR CANSECO,
Secretario Mexicano.

Anexo al Acta de esta fecha.

EL PASO, TEXAS, *Noviembre 30 de 1907.*

Á LOS INGENIEROS CONSULTORES UNIDOS,
COMISIÓN INTERNACIONAL DE LÍMITES,
El Paso, Texas.

SEÑORES:

Acompañamos á la presente, copia de una solicitud recibida, y suscrita por ciertos litigantes americanos, referente al caso del "Banco de San Lorenzo", y una copia de nuestra Acta común de

Noviembre 26 de 1907 en la que constan las declaraciones de J. W. Eubank y G. W. Huffman sobre este caso.

Los Comisionados desean que los Ingenieros Consultores unidos rindan un Informe común, si están de acuerdo entre sí, ó separadamente si no lo están, que cubra los puntos técnicos en cuestión, empleando como documentos para basar sus investigaciones los siguientes planos:—

De Emory-Salazar de 1852,
" Heldt " 1889,
" Follett " 1899,
" Pani " 1899 y el
" los Ingenieros Consultores de 1907.

Quedan ustedes autorizados para tomar en consideración y examinar los planos, documentos é informes técnicos que juzguen competentes sobre la materia, y que les facilite la solución de los puntos técnicos de que se trata.

Los Comisionados advierten á ustedes que se les ofrecerá una gran cantidad de informes que no son del caso ni concluyentes, pero no deberán considerar sino aquello que tengan relación directa con los referidos puntos técnicos por resolver.

Los Ingenieros Consultores no aceptarán ninguna información que se les presente, á menos que ambos la reciban unidos.

Muy respetuosamente,

(Firmada)

F. B. PUGA. ANSON MILLS.
Comisionado Mexicano. *Comisionado Americano.*

Es copia

EL PASO, TEXAS, *Noviembre 30 de 1907.*

CÉSAR CANSECO
Secretario Mexicano.

[Joint Journal.]

EL PASO, TEXAS, *December 10, 1907.*

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

The Joint Consulting Engineers advised that owing to the extended field work projected in the El Paso Valley many maps and reports would have to be prepared in order to carry out the plan desired by the Commissioners and outlined in the Joint Journal of December 6, 1907, they respectfully requested that they be authorized to defer the reports and preparation of maps in the "San Lorenzo Banco" and the "Bermudez Banco" cases

until such time as they were ready to submit the maps and reports of the whole district originally agreed upon, i. e. the El Paso Valley; that both engineers have large surveying parties in the field which require their close and constant supervision and that such work would suffer if they had at this time to give the proper amount of time and study to the preparation of the reports and maps asked for by the Commissioners in the San Lorenzo and Bermudez cases and that the matter of bancos could be more intelligently considered with the entire survey and completed maps before them.

The Commissioners after carefully considering the questions raised by the Engineers agreed to postpone further action in the two cases named until such time as the Engineers have completed their survey of the El Paso Valley and also the river in the vicinity of Presidio, Texas, and the mouth of the Concho River, and were ready to submit their reports and maps fully covering same, when the Commission would take up for consideration all the cases included in said district and upon their completion move the headquarters of the Commission to San Antonio, Texas, and start upon the work of the lower river.

It was also agreed that the American contestants in the two cases be notified that their request of thirty days time in which to prepare and present their evidence is granted; such evidence to be of the character outlined in previous letters of the Commissioners to them.

The Commission then adjourned as stated.

ANSON MILLS. F. B. PUGA.
WILBUR KEBLINGER. CÉSAR CANSECO.

[Acta]

EL PASO, TEXAS, *Diciembre 10 de 1907.*

La Comisión se reunió á las 10 a. m. en la oficina de su Sección mexicana.

Expusieron los Ingenieros Consultores que, teniendo que preparar numerosos planos é informes sobre su extenso levantamiento del Valle del Paso para poder dar cumplimiento al programa que se les delineó en el Acta de 6 de Diciembre de 1907, respetuosamente desean que se les permita diferir la presentación de planos é informes sobre los bancos de "San Lorenzo" y de "Bermúdez" hasta que tengan listos los relativos á todo el Valle del Paso, que es la zona primera á cuyo estudio se refería su programa original. Explicaron que ambos tienen trabajando en el campo varias

Secciones de Ingenieros que deben ser vigiladas constante y cuidadosamente, y que esto se entorpecería si se necesitara tomar el tiempo y hacer los estudios necesarios para la preparación de los planos é informes sobre los casos de "San Lorenzo" y de "Bermúdez" que la Comisión desea. Insinuaron, por último, que todo el asunto de bancos podrá ser más adecuadamente discutido teniendo presente toda esa serie completa de levantamientos y planos.

Después de reflexionar detenidamente sobre estas consideraciones de los Ingenieros, los Comisionados acordaron aplazar la continuación de los dos casos citados hasta que dichos Ingenieros hayan concluido su levantamiento del Valle del Paso, y aún el del Valle de Presidio, endonde está la confluencia del Conchos, y estén listos para presentar planos é informes que abarquen todos los casos comprendidos en ambas zonas, decididos los cuales la Comisión cambiará su residencia á San Antonio, Texas, y dará principio al estudio del Bajo Río.

Se acordó, así mismo, notificar á los opositores americanos en estos dos casos que se les conceden los treinta días de plazo que han solicitado para preparar y presentar sus pruebas á la Comisión, repitiéndoseles que dichas pruebas deben ser de la naturaleza descrita en las cartas anteriores que los Comisionados les han escrito.

Quedó aplazada la Comisión para la época referida.

F. B. PUGA. ANSON MILLS
CÉSAR CANSECO WILBUR KEBLINGER

DEPARTMENT OF STATE
INTERNATIONAL (WATER) BOUNDARY COMMISSION,
UNITED STATES AND MEXICO.
(Treaties of 1884 and 1889.)

EL PASO, TEXAS, *December 12, 1907.*

Messrs. W. W. TURNEY, RICHARD F. BURGES, T. A. FALVEY and LEIGH CLARK,
El Paso, Texas.

GENTLEMEN:

Referring to your communication of Nov. 30th, requesting that thirty days' time be granted you in order to prepare and present evidence connected with the "San Lorenzo Banco," and the Commissioners' letter of same date to you, we beg to advise that the Joint Commission will grant the thirty days' asked and will

reserve its decision in the case until its next meeting after the expiration of said thirty days.

Very respectfully,

CÉSAR CANSECO,
Secretary Mexican Section.

WILBUR KEBLINGER,
Secretary American Section.

DOCUMENTS RELATING TO THE WESTERN BOUNDARY OF LOUISIANA.

I. SECRET INSTRUCTIONS FOR THE CAPTAIN-GENERAL OF LOUISIANA, APPROVED BY THE FIRST CONSUL.[a]

An xi, 5 Frimaire [i. e., November 26, 1802].

The colony of Louisiana is a vast province located west of the Mississippi, which forms on that side its common boundary with the United States.

On the west it is bounded by New Mexico [*Nouveau-Mexique*], on the south by the sea, and at the north by a limitless extent of lands scarcely known.

That colony, retroceded to the French Republic by his Catholic Majesty, in consequence of the treaty concluded at San Ildefonso, 9 Vendémiaire, an ix [i. e., October 1, 1800], must be restored with the same extent that it had during the period when it belonged to Spain, the same that it had when France owned it, and such as it ought to be according to the treaties passed subsequently by his Catholic Majesty and other states.

Such is the text of article 3 of the treaty of San Ildefonso, and such are the directions contained in the king's order, of which General Victor shall transmit a copy to the Marqués de Someruelos [*Sommêruelos*], who is charged with the retrocession in behalf of his Catholic Majesty.

The extent of Louisiana, the boundary of which has only been indicated above, is well determined at the south by the Gulf of Mexico.

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[a] [The greater portion of these instructions is omitted as irrelevant. For complete text, translated from original manuscript, see "Louisiana under the rule of Spain, France and the United States, 1785–1807, by James Alexander Robertson, Vol. 1, pp. 361, 362. These instructions appear never to have been issued to General Victor, inasmuch as he never actually took over the Captain-Generalcy of Louisiana. However, General Laussat, the French Commissioner, who turned Louisiana over to the United States, evidently had a copy of them (see Robertson, p. 361, footnote), and he communicated their contents to the representatives of the United States. (See Henry Adams' History, Vol. II, pp. 255, 298).—Agent's note.]

But, bounded on the east by the river called Rio Bravo,[a] from its mouth to the thirtieth degree, its line of demarcation has not been traced beyond the latter point, and it appears that no convention has ever been held concerning this point of the frontier.

* * * * * * *

Mr. Adams to Señor Don Luis de Onis.[b]

DEPARTMENT OF STATE,
March 12th, 1818.

SIR,

* * * * * * *

Let us pass to the consideration of the western boundaries of Louisiana.

With the note of Messrs. Monroe and Pickney to Don Pedro Cevallos, of 28th January 1805, a memoir upon these boundaries was presented to that minister, proving that they extended eastward to the Perdido, and westward to the Rio Bravo, or Grande del Norte. They observed in that note, that "the facts and principles which justify this conclusion, are so satisfactory to their government, as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory thus described."

In their note of the 20th April, 1805, to the same minister, replying to his argument in support of the pretensions of your government with regard to those limits, they lay down and establish, by a chain of reasoning, which neither Mr. Cevallos, at the time, nor your government, at any period since, have ever attempted to break, three principles, sanctioned alike by immutable justice, and the general practice of the European nations, which have formed settlements and held possessions in this hemisphere; and by the application of which to the facts also stated in their note, this question of the western boundary ought then to have been, and, eventually, must be settled. These principles were,

First. "That when any European nation takes possession of any extent of seacoast, that possession is understood as extending into the interior country, to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same."

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[a] [The Rio Grande del Norte.—Author's note.]

[b] [A brief excerpt only from this note is printed; for full text see State papers 1st Session, Fifteenth Congress, document 155, page 59, at pages 64 and 65.—Agent's note.]

Secondly. "That whenever one European nation makes a discovery and takes possession of any portion of this continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, that the middle distance becomes such of course."

Thirdly. "That whenever any European nation has thus acquired a right to any portion of territory on this continent, that right can never be diminished or affected by any other power, by virtue of purchases made by grants or conquests of the natives, within the limits thereof."

The facts stated in this last mentioned note, and to which these principles were applied in support of the claim of the United States, under the cession of Louisiana by France to them, were,

1. That the Mississippi, in its whole length to the ocean, was discovered by French subjects from Canada, in 1683.

2. That La Salle, a Frenchman, with a commission and authority from Louis XIV., discovered the bay of St. Bernard, and formed a settlement there, on the western side of the river Colorado, in the year 1685, and that the possession, thus taken, in the bay of St. Bernard, in connexion with that on the Mississippi, had always been understood, as of right it ought, to extend to the Rio Bravo.

3. That the boundary, thus founded upon possession, was described as forming the limits of Louisiana, in the grant by Louis the XIVth, to Crozat, in 1712.

4. That it was supported by the testimony of the historical writers, Du Pratz and Champigny; by a historical and political memoir on Louisiana, written by the count de Vergennes, the minister of Louis the XVIth; by a chart of Louisiana, published in 1762 by Don Thomas Lopez, geographer to the king of Spain; and by a map of De Lisle, of the Academy of Sciences, at Paris, revised and republished there in 1782.

* * * * * * *

Project of a treaty delivered by Don Luis de Onis to the Secretary of State, 9th February, 1819.[a]

[Translation, sent by Don Luis de Onis.]

His Catholic Majesty and the United States of America, desiring to consolidate, on a permanent basis, the friendship and good

[a] [The greater portion of this project is omitted as irrelevant. For complete text see State Papers, 1st Session, 16th Congress, pp. 34–36.—Agent's note.]

correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions, by a treaty which shall designate with precision the limits of the one and the other, the settlement whereof will be productive of general advantage and reciprocal utility to both nations.

With this intention His Catholic Majesty has appointed the most excellent Don Luis de Onis, Gonzales y Vara, Lord of the town of Rayaces, perpetual Regidor of the corporation of the city of Salamanca, Knight Grand Cross of the Royal American order of Isabella the Catholic, decorated with the Lys of La Vendee, Knight Pensioner of the Royal and distinguished Spanish order of Charles the Third, Member of the Supreme Assembly of the said royal order; of the Council of his Catholic Majesty, his Secretary with exercise of decrees, and his Envoy Extraordinary and Minister Plenipotentiary near the United States of America;— and the President of the United States, with the advice and consent of their Senate, has appointed Mr. John Quincy Adams, Secretary of State of the United States. And the Plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

I.

There shall be a firm and inviolable peace and sincere friendship between his Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places.

II.

His Catholic Majesty, desiring to give a distinguished proof of his friendship to the United States, cedes to them, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the names of East and West Florida, such as they were ceded to him by Great Britain, in 1783; and with the limits by which they are designated in the treaty of limits and navigation, concluded between Spain and the United States, on the 27th October, 1795.

III.

The adjacent islands dependent on said provinces, places, public squares, public edifices, fortifications, barracks, and other buildings which are not the property of some private individual, archives, and documents which relate directly to the property and sovereignty of said provinces, are included in this article.

IV.

That at no time whatever there may be any dispute or mistake in the boundaries which shall separate in future the territories of his Catholic Majesty and those of the United States, to the westward of the Mississippi, the two high contracting parties have agreed to fix them in the following manner:—The boundary line between the two countries shall begin on the Gulph of Mexico, at the mouth of the river Sabina in the sea; continuing north, along the middle of that river, to the 32° of latitude; thence, by a line due north, to the 33° of latitude where it strikes the Rio Roxo of Natchitoches, *Red River*, following the course of the Rio Roxo to the westward to the 100° of longitude; and 33¼° latitude, where it crosses that river; thence, by a line due north, by the said 100° of longitude from London, according to Melish's map, till it enters the river Arkansas; thence, along the middle of the Arkansas, to the 42° of latitude; thence a line shall be drawn to the westward by the same parallel of latitude to the source of the river San Clemente, or Multnomah, following the course of that river to the 43° of latitude; and thence, by a line due west, to the Pacific Ocean. All the country belonging to his Catholic Majesty included in said line to the eastward, his Majesty cedes to the United States, in full property and sovereignty, forever; as also the islands in the rivers Sabina, Red River of Natchitoches, Arkansas, and Multnomah, that may be situated within the limits which are here pointed out; both parties to maintain the navigation of all of them free as respects the parts thereof which constitute their frontiers.

V.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, in conformity to what is above agreed upon and stipulated; they shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to these persons, and also as to their respective escorts, should such be deemed necessary.

COUNTER PROJECT OF A TREATY.

Communicated by Mr. Adams to Don Luis de Onis, the 13th of February, 1819.[a]

The United States of America, and his Catholic Majesty, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions, by a treaty, which shall designate, with precision, the limits of their respective bordering territories in North America.

With this intention, the President of the United States has furnished with their full powers John Quincy Adams, Secretary of State of the said United States, and his Catholic Majesty has appointed the most excellent Lord Don Luis de Onis Gonzales Lopes y Vara, Lord of the town of Rayaces, Perpetual Regidor of the Corporation of the City of Salamanca, Knight Grand Cross of the Royal American Order of Isabella the Catholic, decorated with the Lys of La Vendee, Knight Pensioner of the Royal and distinguished Spanish Order of Charles the Third, member of the Supreme Assembly of the said Royal Order, of the Counsel of His Catholic Majesty; his Secretary, with exercise of decrees, and his Envoy Extraordinary and Minister Plenipotentiary near the United States of America.

And the said Plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

I.

There shall be a firm and inviolable peace and sincere friendship between the United States and their citizens, and His Catholic Majesty, his successors, and subjects, without exception of persons or places.

II.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent Islands, dependent on said Provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said Provinces, are included in this

[a] [The greater portion of this project is omitted as irrelevant. For complete text, see State Papers, 1st Session, Sixteenth Congress, pages 40–42.—Agent's note.]

article. The said archives and documents shall be left in possession of the Commissaries, or officers, of the United States, duly authorized to receive them.

III.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the River Sabine, in the sea; continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or *Red River;* thence, following the course of the Rio Roxo, westward, to the degree of longitude 102 west from London, and twenty-five from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 41 north; and thence, by the parallel of latitude, to the South Sea; the whole being as laid down in Melish's Map of the United States, published in Philadelphia, improved to the first of January, 1818. But, if the source of the Arkansas river should be found to fall north or south of latitude 41°, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 41; and thence, along the said parallel, to the South Sea: the Sabine and the said Red and Arkansas rivers, and all the islands in the same, throughout the course thus described, to belong to the United States; and the western bank of the Sabine, and the southern banks of the said Red and Arkansas [rivers,] throughout the line thus described, to belong to Spain. And the United States hereby cede to His Catholic Majesty all their rights, claims, and pretensions, to the territories lying west and south of the above described line; and His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions, to any territories east and north of the said line, and, for himself, his heirs, and successors, renounces all claim to the said territories forever.

IV.

To fix this line with more precision, and to place the land marks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this Treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line from the mouth

of the Sabine to the Red River, and from the Red River to the River Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated; they shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this Treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

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Paper received by the Secretary of State from Mr. Hyde de Neuville, 16th February, 1819.[a]

[Translation.]

Remarks of the Chevalier de Onis.	*Remarks of the Secretary of State.*
ARTICLE 1.	The Secretary of State maintains, that the United States have always intended that the property of the river should belong to them. He insists on this point, as an essential condition, as the means of avoiding
Agreed.*	
ARTICLE 2.	
Requires a more explicit explanation.*	

[a] [The following note appears in the original Congressional document. See State Papers, 1st Session, 16th Congress, pp. 46–77.—Agent's note.]

Mr. de Onis being at this time confined by indisposition, at his request Mr. Hyde de Neuville had a personal interview with the Secretary of State on the 15th of February, at which there was a full and free discussion of the project of Mr. de Onis, delivered February 9th, and of the counter project communicated by him to Mr. de Onis, February 13th. Immediately after this interview, Mr. de Neuville reduced to writing this paper, in which are noted the objections of Mr. de Onis to parts of the counter project; the replies to those objections by the Secretary of State, and the points to which both parties were agreed. He sent a copy of the paper the next morning to the Secretary of State, and another copy to Mr. de Onis. Being intended merely as a private minute, that both parties might be satisfied of the correctness in which their respective remarks were stated, it was drawn up partly in French, and partly in our own language. The passages here marked with asterisks, are in English in the original paper. The rest is translated.

The minutes upon the 8th article, compared with the draft in the project of Mr. de Onis; with that of the counter project by the Secretary of State, and with the article, as finally expressed in the treaty, fully elucidate the understanding of the parties, that the grants of land, dated before, as well as after, the 24th January, 1818, were annulled, excepting those upon which settlements had been commenced; the completion of which had been prevented by the circumstances of Spain, and the recent revolutions in Europe.

The passages marked thus (*) are in English in the paper received from Mr. de Neuville.

ARTICLE 3.

The Chevalier Onis requires, that the boundary between the two countries shall be the middle of the rivers, and that the navigation of the said rivers shall be common to both nations.

The minister of Spain agrees to the 100th degree of longitude, and to remove all difficulties, to admit the 42d instead of the 43d degree of latitude from the Arkansas to the Pacific Ocean.

ARTICLE 4.

Agreed, as proposed by the Secretary of State.

ARTICLE 5.

Agreed.

* * * * * * *

all collision, and as a principle adopted henceforth by the Union, in its treaties with its neighbors. He agrees, however, that the navigation of the said rivers to the sea shall be common to both people. The Secretary of State conceives, that in this clause there is nothing humiliating to Spain, as seemed to be thought; since it is not intended to impose on her an onerous stipulation, but to fix a territorial limit, which, in fact, might be extended beyond the rivers mentioned. He considers this clause as indispensable, and as eminently calculated to preserve a good understanding between the two people.

Agreed.

STATUTES OF THE UNITED STATES OF AMERICA, ETC.

No. 8. JOINT RESOLUTION for annexing Texas to the United States.[a]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. *And be it further resolved*, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First*, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second.* Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south

[a] [U. S. Statutes at Large, Vol. 5, pp. 797, 798.—Agent's note.]

of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime,) shall be prohibited.

3. *And be it further resolved*, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on a equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texan territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

Approved, March 1, 1845.

CHAP. I.

AN ACT to extend the Laws of the United States over the State of Texas, and for other purposes.[a]

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That all the laws of the United States are hereby declared to extend to and over, and to have full force and effect within, the State of Texas admitted at the present session of Congress into the Confederacy and Union of the United States.

Sec. 2. *And be it further enacted*, That the said State of Texas shall constitute one judicial district, to be called the District of Texas, for which one judge shall be appointed, who shall reside

[a] [U. S. Statutes at Large, Vol. 9, pp. 1 and 2.—Agent's note.]

therein, and who shall receive a salary of two thousand dollars per annum, and who shall hold the first term of said court at Galveston, on the first Monday of February next, and at such other times and places in said district as may be provided by law, or as said judge may order; and that said court shall have and exercise the same powers and jurisdiction as have been conferred by law on the District Courts of the United States; and, also, shall have and exercise the powers and jurisdiction of a Circuit Court of the United States; and appeals and writs of error shall lie from the decisions of said District and Circuit Courts for the District of Texas to the Supreme Court of the United States, in the same cases as from a Circuit Court of the United States to said Supreme Court, and under the same regulations.

Sec. 3. *And be it further enacted*, That there shall be appointed in and for said district a person learned in the law, to act as attorney of the United States for said district, and also a person to act as marshal of the United States for said district, each of whom shall receive an annual salary of two hundred dollars, and also such compensation and fees for official services as have been or may be provided by law for United States district attorneys and marshals; and the judge of said court shall appoint a clerk therefor, who shall receive like compensation and fees as have been or may be allowed by law to clerks of the District and Circuit Courts of the United States.

Approved, December 29, 1845.

LAWS OF THE REPUBLIC AND OF THE STATE OF TEXAS.

AN ACT to define the Boundaries of the Republic of Texas.[a]

SEC. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to

[a] [Gammel's Texas Laws, 1836–1839. Vol. 2, pp. 133 and 134.—Agent's note.]

open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty.

IRA INGRAM,
Speaker of the house of representatives.
RICHARD ELLIS,
President pro tem of the senate.

Approved, Dec. 19, 1836.

SAM. HOUSTON.

NINTH CONGRESS—REPUBLIC OF TEXAS.

EXTRA SESSION.

JOINT RESOLUTION giving the consent of the existing Government to the annexation of Texas to the United States.[a]

Whereas, the Government of the United States hath proposed the following terms, guarantees, and conditions, on which the people and territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing Government, in order that the same may be admitted as one of the States of this Union.

"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit:

"First. Said State to be formed, subject to the adjustment by this Government of all questions of boundary that may arise with other Governments; and the Constitution thereof, with the proper evidence of its adoption, by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six.

[a] [Gammel's Texas Laws. 1838–1846. Vol. 2, pp. 1225–1227.—Agent's note.

"Second. Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yard, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States.

"Third. New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime), shall be prohibited."

And whereas, by said terms, the consent of the existing government of Texas is required—Therefore,

Be it resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the government of Texas doth consent, that the People and territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the People of said Republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union; and said consent is given on the terms, guarantees, and conditions set forth in the Preamble of this Joint Resolution.

Sec. 2. Be it further resolved, That the proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to

sit in Convention, at Austin, on the fourth day of July next, for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Texas.

Sec. 3. Be it further resolved, That the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

JOHN M. LEWIS,
Speaker of the House of Representatives.
K. L. ANDERSON,
President of the Senate.

Approved, June 23, 1845.

ANSON JONES.

JOINT RESOLUTION declaring the exclusive right of the State of Texas to the jurisdiction over the soil included within the limits thereof.[a]

Section 1. Be it resolved by the Legislature of the State of Texas, That the exclusive right to the jurisdiction over the soil included in the limits of the late Republic of Texas was acquired by the valor of the people thereof, and was by them vested in the government of the said Republic, that such exclusive right is now vested in and belongs to the State, excepting such jurisdiction as is vested in the United States, by the constitution of the United States, and by the joint resolution of annexation, subject to such regulations and control as the government thereof may deem expedient to adopt; that we recognize no title in the Indian tribes, resident within the limits of the State to any portion of the soil thereof, and that we recognize no right in the government of the United States to make any treaty of limits with the said Indian tribes, without the consent of the government of this State.

Sec. 2. Be it further resolved, That his excellency the Governor, be requested to communicate this resolution to the government of the United States, and to our senators and representatives in congress.

Approved, 29th April, A. D. 1846.

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[a] [Gammel's Texas Laws. 1838–1846. Vol. 2, p. 1461.—Agent's note.]

JOINT RESOLUTION.[a]

Resolved by the Legislature of the State of Texas, That all that territory which lies east of the Rio Grande and a line running north from the source of the Rio Grande to the forty-second degree of north latitude, and south of the forty-second degree of north latitude, and west and south of the line designated in the treaty between the United States and the late Republic of Texas, of right belongs to the State of Texas, is included within her rightful civil and political jurisdiction, and the State of Texas will maintain the integrity of her territory.

Approved, February 11, 1850.

AN ACT to relinquish the right of the State to certain Lands therein named.[b]

Section 1. Be it enacted by the Legislature of the State of Texas, That the State of Texas hereby relinquishes all right and interest in the following described lands, to the original grantees thereof, their heirs, and legal assigns, to-wit: In the county of El Paso— 1. To the people of the town of Socorro, one league of land, called "El Pueblo de Socorro. 2. Jose Sanchez, Guadalupe Mirando and Romelo Barela, one league and one half league of land, called "El Canutillo." 3. To Juan Maria Ponce de Leon, two caballerias of land, called "El Rancho de Ponce," now known as the town of Franklin. 4. To Juan and Jacinto Ascarete, three leagues of land, called "El Rancho de Ascarete."

Sec. 2. That it shall be the duty of the several claimants to the lands named in this act, to have the same surveyed by the district or county surveyor of said county, which survey shall in all respects conform to the metes and bounds designated in the original grant, and upon the return of the field-notes thereof to the General Land Office, the Commissioner of the General Land Office, is hereby authorized and required to have the same plotted on the proper map in his Office, and issue Patents for the same in accordance with existing laws.

Sec. 3. That the confirmation herein extended to the lands named in this act, shall in no way be construed to interfere with any rights which may have accrued to other parties before the passage of this act. Provided, that nothing in this act shall be so construed as to relinquish the right of the State to any of the Islands or Salt Lakes situated in the county named in this act.

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[a] [Gammel's Texas Laws. 1848–1854. Vol. 3, pp. 207, 208.—Agent's note.]

[b] [Gammel's Texas Laws. 1853–1861. Vol. 4, p. 155.—Agent's note.]

Sec. 4. That this Act take effect and be in force from and after its passage.

Approved, February 11, 1858.

AN ACT to incorporate the City of El Paso.[a]

Section 1. Be it enacted by the Legislature of the State of Texas, That all the inhabitants of the county of El Paso, within the hereinafter described bounds and limits, are hereby constituted a body corporate and politic, with perpetual succession, under the name and style of "The City of El Paso;" and under that name shall have power, first, to sue and be sued; second, to purchase and hold real and personal property for the use of the city, and land for taxes; third, to sell and convey any real or personal estate owned by the city, and make such order respecting the same, as may be conducive to the interest of the city; fourth, to make all contracts, and do all other acts in relation to the property and concerns of the city, necessary to the exercise of its corporate or administrative powers; fifth, to have a corporate seal.

Sec. 2. That the said corporation shall have jurisdiction over all that territory within the county of El Paso, included within the following described bounds and limits: Commencing on the Rio Grande, at a point five hundred yards north of Hart's mills; thence east to the northwest corner of what is known as the Cummings' survey; thence south, following the west line of the Cummings' survey, to the banks of the Rio Grande; thence west and north, following the banks of said river, to the place of beginning.

* * * * * * *

Approved May 17th, 1873.

PATENTS GRANTED BY THE STATE OF TEXAS, ETC.

PATENT TO JAMES W. MAGOFFIN, HEIRS AND ASSIGNS; ASSIGNEE TO N. W. BURDETT OF SURVEY NO. 2, SECTION NO. 1, IN EL PASO COUNTY, FEBRUARY 20, 1858.

No. 91. Vol. 2.

No. 588.

In the name of the State of Texas to all to whom these presents shall come:

Know ye, that I, H. R. Runnels, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with

[a][Only relevant portion printed. For full text, see Gammel's Texas Laws. 1871–1873. Vol. 7, p. 438.—Agent's note.]

the laws of said state in such case made and provided, do by these presents grant to James W. Magoffin, Assee. of N. W. Burdett, his heirs and assigns forever, Three Hundred and Twenty Acres of Land, situated and described as follows:

In El Paso County, on the East Bank of the Rio Grande, about 2½ miles below El Paso, and known as Survey No. 2, in Section No. 1, by virtue of Donation Warrant No. 463, issued by the Adjutant General on the 6th day of December, 1852 and transferred by Burdett to I. L. Antrim on the 6th day of December, 1832, and by said Antrim transferred to James W. Magoffin on the 25th day of June, 1853, and in accordance with the provisions of "An Act of the Legislature, approved 21st of January, 1854."

Beginning at a stake the S. W. Corner of Survey No. 1; Thence North 2368 varas to a rock mound; thence west 672 varas to a Rock Mound; thence South 3008 varas to a stake on the Bank of the Rio Grande; Thence down said River with its meanders to the place of beginning.

Hereby relinquishing to him, the said James W. Magoffin, and his heirs or assigns forever all the right and title in and to the said land heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.

In testimony whereof, I have caused the Seal of the State to be affixed, as well as the Seal of the General Land Office.

Done at the City of Austin on the Twentieth day of February in the year of our Lord One Thousand Eight Hundred and Fifty Eight.

H. R. RUNNELS, *Governor.* [SEAL]

S. CROSBY, [SEAL]
Commissioner of the G'l L'd Office.

A true Copy filed for registration July 29, A. D. 1871, and duly recorded July 29, A. D. 1871.

EDMUND STEIN, *Cl'k.*

PATENT TO JAMES W. MAGOFFIN, HEIRS AND ASSIGNS, OF SURVEY NO. 3 IN SECTION NO. 1, IN EL PASO COUNTY, FEBRUARY 20, 1858.

In the Name of the State of Texas.

To all to whom these presents shall come, Know ye, I, H. R. Runnels, Governor of the State aforesaid by virtue of the Power vested in me by law and in accordance with the laws of said State in such case made and provided do by these presents grant to James W. McGoffin Assee. of James Manning, his heirs or assigns forever. Three hundred and twenty acres of land, situated and

described as follows: In El Paso County on the East Bank of the Rio Grande about 2 miles below El Paso and known as Survey No. 3; in Section No. 1 by virtue of Donation Warrant No. 462 issued by the Adjutant General on the 30th day of November 1852 and transferred by said Manning per Attorney Noah Smithwick to Joel L. Ankrim on the 30th day of November 1852, and by said Ankrim transferred to James W. McGoffin on the 25th day of June 1853 and in accordance with the provisions of "An Act of the Legislature, approved 21st January 1854.

Beginning at a stake the South west corner of Survey No. 2, Thence North 2330½ varas to a Rock Mound; Thence West 672 varas to a Rock mound; Thence South 3045½ varas to a stake on the bank of the Rio Grande; Thence down said River with its meanders to the place of beginning.

Hereby relinquishing to him the said James W. McGoffin and his heirs or assigns forever, all the right and title in and to said land heretofore held and possessed by the said State and I do hereby issue this letter Patent for the same.

In Testimony whereof I have caused the seal of the State to be affixed as well as the seal of the General Land Office.

Done at the City of Austin on the Twentieth day of February In the Year of our Lord one thousand eight hundred and fifty eight.

H. R. RUNNELS [SEAL]
Governor.

S. CROSBY, [SEAL]
Commissioner of the Gl. Ld. Office.

A true copy,

Filed for registration July 29th A. D. 1871 and duly recorded July 29th A. D. 1871.

EDMOND STINE, *Clk.*

PATENT TO JAMES W. MAGOFFIN, HEIRS AND ASSIGNS, OF SURVEY NO. 4 IN SECTION NO. 1, IN EL PASO COUNTY, FEBRUARY 20, 1858.

In the Name of the State of Texas,

To all to whom these presents shall come, Know ye: I, H. R. Runnels, Governor of the State aforesaid by virtue of the power vested in me by law, and in accordance with the laws of said State in such case made and provided, do by these presents grant to James W. McGoffin, Assee. of James Manning his heirs or assigns forever, Three Hundred and twenty acres of land, situated and described as follows: In El Paso County, on the East side of the

Rio Grande about 1¼ miles below opposite El Paso, and known as Survey No. 4, in Section No. 1, by virtue of Donation warrant No. 462 issued by the Adjutant General on the 30th day of November 1852 and transferred by said Manning per Attorney Noah Smithwick to Joel L. Ankrim on the 30th day of November 1852, and by said Ankrim transferred to James W. McGoffin on the 25th day of June 1853, and in accordance with the provisions of An Act of the Legislature approved 21st of January 1854. Beginning at a stake the South west corner of Survey No. 3, Thence N. 2925 varas to a Rock Mound; Thence West 534 varas to a Rock mound; Thence South 3829 varas to a stake on the Bank of the River; Thence down said River with its meanders to the place of beginning.

Hereby relinquishing to him the said James W. McGoffin and his heirs or assigns forever all the right and title in and to said land heretofore held and possessed by the said State and I do hereby issue this Letter Patent for the same.

In Testimony whereof I have caused the Seal of the State to be affixed as well as the seal of the General Land Office. Done at the City of Austin on the Twentieth day of February. In the Year of Our Lord One Thousand eight hundred and fifty eight.

H. R. RUNNELS,
Governor

S. CROSBY,
Comr. of the Gl. Ld. Office.

A true copy.

Filed for registration July 29th A. D. 1871 and duly recorded July 29th A. D. 1871.

EDMOND STINE, *Clk.*

THE STATE OF TEXAS,
County of El Paso.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the record of the Letter Patent issued to James W. McGoffin by H. R. Runnels, Governor of the State of Texas dated the Twentieth day of February, 1858, as the same appears of record in Book D, page 326 of the Deed Records of said County.

Given under my hand and the seal of said Court, at office in El Paso this the 20th day of March, A. D. 1911.

Attest:

PARK W. PITMAN, *County Clerk.*
By M. E. GRADY, *Deputy.*

(Seal): County Court of El Paso County, Texas.

THE STATE OF TEXAS,
County of El Paso.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the Record of the Letter Patent issued to James W. McGoffin by H. R. Runnels, Governor of the State of Texas, dated the Twentieth day of February, 1858, as the same appears of record in Book D, page 327 of the Deed Records of said County.

Given under my hand and the seal of said Court, at office in El Paso this the 20th day of March, A. D. 1911.

Attest: PARK W. PITMAN, *County Clerk.*
By M. E. GRADY, *Deputy.*

(Seal): County Court of El Paso County, Texas.

PATENT TO JUAN MARIA PONCE DE LEON, HEIRS AND ASSIGNS, OF SURVEY No. 145 IN SECTION No. 1, IN EL PASO COUNTY, MAY 4, 1887.

In the name of the State of Texas.

To All To Whom These Presents Shall Come; Know ye, I, L. S. Ross, Governor of the State aforesaid, by virtue of the power vested in me by law, and in accordance with the laws of said State in such case made and provided, do by these presents grant to Juan Maria Ponce de Leon, his heirs or assigns forever, Three million Five Hundred & Ninety seven Thousand & Five (3,597,005) sq. vrs. of Land, situated and described as follows: In El Paso County known as Sur. No. 145 in Section No. 1 on the East bank of the Rio Grande about one mile above Old Fort Bliss containing the present town of El Paso it being the land to which he is entitled by virtue of an Act of the Legislature of the State of Texas, relinquishing all her right and interest in "El Rancho de Ponce" known as the Town of Franklin. approved Febry. 11th 1858. Beginning at a Cottonwood tree 8′ dia. on the bank of the River between two acequias from which a cottonwood 10′ dia. mkd. X brs. S. 55 E. 7 vrs. and a trible cottonwood each stock 5′ dia. mkd. X brs. S. 55 E. 67 vrs. and the S. W. cor. of Sur. No. 1 made for Moses Hughes brs. S. 67½ E. 2428 vs. Thence East at 177 vrs a pile of stone and line monument on the point of a hill at 1104 vrs. a pile of stone and line monument from which the head of Dr. F. M. Giddings monument brs. S. 83 E. 136 vs. Thence north 53 East 1861 vrs. to a stone heap from which a cottonwood 24′ dia. mkd. X brs. S. 57 E. 236½ vrs. Thence S.

26½ E. 1423½ vrs. to a stake and 3 large stones on the bank of the River from which a Tornia 4′ dia. mkd. X brs. N. 36 E. 7 vrs. & another 3 dia. mkd. X brs. N. 79 W. 6 vrs. Thence up the river with its meanders to the place of beginning. This Letter Patent shall not be so construed as to prejudice the rights of Adverse claimants prior to Febry. 11th 1858.

Hereby relinquishing to him the said Juan Maria Ponce de Leon and his heirs or assigns, forever. all the right and title in and to said Land heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.

In Testimony Whereof, I have caused the seal of the State to be affixed, as well as the seal of the General Land Office. Done at the City of Austin on the Fourth day of May, in the year of our Lord One Thousand Eight Hundred and Eighty seven.

L. S. ROSS, [SEAL]
Governor.

R. M. HALL, [SEAL]
Commissioner of Gen. Land Office.

THE STATE OF TEXAS,
County of El Paso.

I hereby certify that the foregoing patent was filed for record in my office the 12th day of May A. D. 1887 at 12:20 o'clock P. M. and duly recorded this 16th day of May A. D. 1887, in Patent Record No. 1.

F. P. CLARK,
Clerk County Court El Paso Co., Texas.
W. A. GIBBS, *Deputy.*

THE STATE OF TEXAS,
County of El Paso.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the Record of the Patent issued to Juan Maria Ponce de Leon by L. S. Ross, Governor of the State of Texas, dated the Fourth day of May, A. D. 1887, as the same appears of record in Vol 1, Book 25 page 7, of the Patent Records of said County.

Given under my hand and the seal of said Court, at office in El Paso this the 20th day of March, A. D. 1911.

Attest:

PARK W. PITMAN, *County Clerk.*
By M. E. GRADY, *Deputy.*

(Seal): County Court of El Paso County, Texas.

FIELD NOTES, SURVEY No. 1 IN SECTION No. 15 OF A LEAGUE OF LAND, MADE FOR MOSES EVANS AND R. R. PEEBLES, ASSIGNEE OF MOSES HUGHES.

STATE OF TEXAS, Survey No. 1.

District of Bexar.

Field notes of a survey of 1 league of land made for Moses Evans and R. R. Peebles, assignee of Moses Hughes; it being the land to which they are entitled by virtue of certificate issued by the board of land commissioners for the county of Washington on the 1st day of March A. D. 1838. Said survey is No. 1 in section No. 15 situated on the Rio Grande opposite the town of El Paso del Norte.

Beginning at a stake set at the crossing from El Paso from which a cat claw 3 in. dia. bears N. 32° W. 35 varas a cat claw 4 in. dia. bears N. 33½° W. 40 varas; thence north 11145 varas to a stake and mound. Thence east 2550 varas to a stake and mound. Thence south 9261 varas to stake set on bank of Rio Grande from which a cottonwood 5 in. dia. bears S. 12° E. 4 varas; cottonwood 7 in. dia. bears S. 3° W. 4½ varas. Thence up the river with its meanders to the place of beginning. Bearings marked 12 labors arable, the balance pasture.

Wm. Green, Wm. Emery, chain carriers.

I, Robt. B. Hays, deputy surveyor for Bexar district, do certify that the survey designated by foregoing plat and field notes was made according to law and that the limits, boundaries, and corners of the same, together with the marks natural and artificial are truly described therein.

ROBT. B. HAYS,
Deputy Surveyor, Bexar District.

I, I. S. McDonald, district surveyor for Bexar district, do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in Book A No. 5, page 260.

I. S. MCDONALD,
Deputy Surveyor Bexar District.

San Antonio, December 17th, 1849.

(Written across face:) Certificate withdrawn in consequence of not being able to procure a patent under the existing law. March 4th, 1853.

H. C. FOUNTAIN.

(11/30/88. Copied from Record Book A, Surveyor's Office, page 1.)

71210—11——10

FIELD NOTES OF SURVEY No. 57 IN SECTION No. 1 OF 320 ACRES OF LAND, MADE FOR JAMES W. MAGOFFIN, ASSIGNEE OF N. W. BURDITT.

STATE OF TEXAS, Survey No. 57.
District of El Paso.

Field Notes of a survey of 320 acres of land made for James W. Magoffin assignee of N. W. Burditt, it being part of the land to which he is entitled by virtue of donation land certificate No. 463 issued to N. W. Burditt for 640 acres of land the 6th day of October, 1852.

Said survey is No. 57 in Section No. 1 situated on the Rio Grande about one and a half miles below the town of El Paso del Norte.

Beginning at a stake set for the southwest corner of survey No. 53 on the banks of the Rio Grande from which a cottonwood 10 inches in diam. bears N. 45° E. 4 varas, a willow 5 inches in diam. bears S. 32° E. 11 varas. Thence N. 2562 varas to a stake and mound. Thence W. 672 varas to a stake and mound. Thence S. 2814 varas to a stake on the banks of the Rio Grande, from which a *tornio* or screw tree 5 inches in diam. bears N. 20° E. 10 varas, another *tornio* bears S. 15° E. 13 varas. Thence down the Rio Grande with its meanders 672 varas to the place of beginning.

Bearings marked:

Surveyed Feb. 15th, 1854.

Sebastiano Orosco, Pablo Ramires, chain carriers.

I, W. L. Diffenderffer, Dist. Surveyor for El Paso District, hereby certify that the survey designated in the foregoing plat and field notes was made according to law, and that the limits, boundaries and corners of the same, together with the marks natural and artificial are truly described therein and that the same is recorded in my office in Book A No. 1 p. 49.

W. L. DIFFENDERFFER,
District Surveyor, El Paso District.

San Elizario, Dec. 26, 1853.

FIELD NOTES OF SURVEY No. 58 IN SECTION No. 1 OF 320 ACRES OF LAND, MADE FOR JAMES W. MAGOFFIN, ASSIGNEE OF N. W. BURDITT.

STATE OF TEXAS, Survey No. 58.
District of El Paso.

Field notes of a survey of 320 acres of land made for James W. Magoffin, assignee of N. W. Burdett, it being part of the land to which he is entitled by virtue of donation land certificate No. 463,

issued to N. W. Burdett for 640 acres of land the 6th day of October, 1852.

Said survey is No. 58 in Sec. No. 1 situated on the Rio Grande about one mile below the town of El Paso del Norte.

Beginning at a stake set on the banks of the Rio Grande for the upper or SW. corner of survey No. 57, from which a tornio or screw tree 4 inches in diam. bears N. 20° E. 10 varas, another tornio bears S. 15° E. 13 varas; thence N. 2449.5 varas to a stake and mound. Thence W. 672 varas to a stake and mound. Thence S. 2926.5 varas to a stake in the banks of the Rio Grande from which a tornio or screw tree bears N. 2° W. 25 varas. Another tornio 5 inches in diam. bears N. 13½° W. 17 varas. Thence down the Rio Grande, with its meanders to the place of beginning. Surveyed Feb. 15th, 1854.

Bearings marked:

Sebastiano Orosco, Pablo Ramires, chain carriers.

I, W. L. Diffenderffer, Dist. Surveyor for El Paso district, hereby certify that the survey designated in the foregoing plat and field notes was made according to law, and that the limits, boundaries, and corners of the same, together with the marks natural and artificial are truly described therein and that the same is recorded in my office in A. No. 1, page 51.

W. L. DIFFENDERFFER,
District Surveyor, El Paso District.

SAN ELIZARIO, *Feb. 15, 1854.*

MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS.

MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, JANUARY 14, 1881.[a]

"EL PASO, TEXAS, *January 14, 1881.*

"A called meeting of the City Council was held on above date. Present: Aldermen Hague, Magoffin, Ochoa, Hart, Krakauer, Slade and City Attorney Neil.

"The Mayor, Sol. Schutz, being absent, Alderman Magoffin took his seat as President pro tem of the Council.

"Minutes of last meeting read and approved.

"Moved that Eighty ($80.00) Dollars, or so much thereof, as may be necessary, be appropriated out of the funds in the City Treasury to repair and fix the City acequia between the City and

[a] [Minute Book B, page 59, et seq.—Agent's note.]

Hart's mill, the same to be expended under the supervision of the water Commissioner. Unanimously carried.

"Whereas, the El Paso Street Railroad Company having presented to the Council for their consideration and action, the following petition, to-wit:

'EL PASO, TEXAS, *January 14, 1881.*

To the Mayor and City Council of the City,
of El Paso at a called meeting held on the 14th day
of January, 1881:

Your petitioners, Joseph Magoffin, I. F. Harrison, George W. Thomas, J. R. Curry, C. B. Wilson and J. P. Hague would respectfully represent:

That heretofore to-wit: on the 14th day of December, 1880 at the City of El Paso, they formed themselves into a body corporate under and by virtue of the provisions of Title 20, Chapter 2, of the Revised Statute, under the name of the El Paso Street Railroad Company; that their organization of said Company is evidenced by duly certified copy of their charter filed in the office of the Secretary of the State of Texas, on the 24th day of December, 1880, and is also further evidenced by duly certified copy of their Articles of Association bearing date 30th day of December, 1880, which certified copy is hereto attached as a part of this petition, and is marked Exhibit "A".

'They would represent that said organization was made and exists in good faith.

'That they, as incorporators, have complied with all the requirements of the law

'That by the assent of this Honorable Body they will comply with the terms of their said Charter and the requirements of the law in every respect, and will construct, operate and maintain the lines of street railway designated in their said Charter as soon as the enterprise shall or may be rendered practicable.

'Wherefore, they pray that your Honorable Body do grant to them in their capacity as incorporators of said Association, the right and authority to enter upon in their said corporate name, and to use and enjoy the several certain streets or ways designated in their said Charter for the usages and purposes therein set forth.

Respectfully,

(Signed) I. F. Harrison
(Signed) George W. Thomas.
(Signed) J. R. Curry.
(Signed) C. B. Wilson
(Signed) J. P. Hague

EXHIBIT A.

STATE OF TEXAS,

El Paso County.

Be it remembered, that we, Joseph Magoffin, I. F. Harrison, George W. Thomas, J. R. Curry, C. B. Wilson, and J. P. Hague, residents of said County, do by this instrument of writing, form ourselves into an association under and by virtue of the provisions of Title 20, Chapter 20, of the Revised Statutes, under and with the following Articles of Incorporation, to-wit:

'ARTICLE I.

'That the name and style of this association shall be: El Paso Street Railroad Company, and shall exist for a period of fifty years, and that the business of this association shall be transacted at El Paso in said County.

'ARTICLE II.

'That this Association is formed for the construction, equipment and maintenance of street railroads in the City of El Paso within the following prescribed limits, to-wit: The first line of street railway to begin at the depot of the Southern Pacific Railroad Company; thence the nearest and most practical route to St. Louis Street, entering such street on the Northeast between blocks No. 41 and 42; thence Southwesterly along St. Louis Street into what is known as the Little Plaza, the head of El Paso Street; thence down El Paso Street to the East bank of the Rio Grande. The second line of street railway to begin at said railroad depot; thence in a Southerly direction in the most direct route to the Rio Grande at the bridge of the Rio Grande and El Paso Railroad Company. The third line of street railway to begin at a point on said first line of street railway at the place of intersection of San Antonio Street and said El Paso Street; thence in an Easterly direction along said San Antonio Street to a point of intersection with said second line of Street Railway. The fourth line of Street railway to begin at the Rio Grande and El Paso Railroad depot; thence in an Easterly or Northeasterly direction, the nearest practical route to a point of intersection with said Second line of street railway.

'ARTICLE III.

'That the incorporators herein named shall constitute the first Board of Directors of this Association, and they shall within sixty days after this charter shall have been filed in the office of th

Secretary of State of said State, elect from their own body, in such manner as may seem to them proper, a President, Vice-President, Treasurer and Secretary, each of whom shall be members of said Board of Directors, and they, together with the other directors, shall have the management and control of the business and affairs of this Association for the term of one year, and until their successors shall be duly elected and qualified.

ARTICLE IV.

That, The capital stock of this Association shall be Twenty Five Thousand Dollars; said stock shall be divided into shares of One Hundred Dollars each, and each share shall entitle the owner thereof to one vote either in person or by proxy at all elections and meetings of this Association, and said stock shall be represented by certificates signed by the President and counter-signed by the Secretary, and shall be transferable in the books of this Association only in person or by attorney.

ARTICLE V.

That, Two per centum of said capital stock shall be subscribed for and paid up within ninety days after notification of filing of this Charter in the office of said Secretary of State shall have been received by this Association, and an additional five per centum shall be subscribed for and paid up at such times and in such manner as may be required by said Board of Directors.

ARTICLE VI.

'That said Board of Directors shall have authority in a mode to be by them provided, to fill vacancies in their Board occasioned by death, resignation or otherwise; to make all needful by-laws, rules and regulations for conducting the business and holding the meetings of this Association, and generally to do or cause to be done any and all things necessary to be done for the successful carrying out of the purposes and objects of this Association, and they shall keep accurate books of account, exhibiting the business, the receipts and expenditures of this Association. A majority of said Directors shall constitute a quorum to do business, and in all things shall have the authority of a full Board, and all conveyances and contracts in writing shall be signed by the President and counter-signed by the Secretary, or by any other officer duly authorized by said Board of Directors, and when the same is executed upon an order of said Board, shall be binding and valid.

'Given under our hands at El Paso, this 14th day of December, A. D. 1880.

(Signed) JOSEPH MAGOFFIN.
(Signed) GEORGE W. THOMAS.
(Signed) C. B. WILSON.
(Signed) I. F. HARRISON.
(Signed) J. R. CURRY.
(Signed) J. P. HAGUE.

STATE OF TEXAS,
El Paso County:

Before me, Adolph Krakauer, notary public, on this day personally appeared I. F. Harrison, George W. Thomas, J. R. Curry, and James P. Hague, known to me to be the persons whose names are subscribed to the foregoing instrument, in writing, each of whom acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Witness my hand and official seal this 15th day of December, A. D. 1880.

[SEAL] (Signed.) ADOLPH KRAKAUER,
Notary Public.

Endorsed: 'Charter of El Paso Street Railroad Co. Filed in Department of State, December 24, 1880. (signed) John B. Templeton, Secretary of State.'

'STATE OF TEXAS,
Department of State.

I hereby certify that the foregoing is a true copy of the original Charter of the El Paso Street Railroad Company, with endorsements thereon, now on file in this office.

In Testimony whereof, I hereunto sign my name and affix the seal of State at the City of Austin, this 30th day of December, A. D. 1880.

(Signed) JOHN B. TEMPLETON,
Secretary of State.'

[SEAL OF STATE.]

"Whereupon, after due consideration, it was resolved that right and authority be and the same is hereby granted the said corporation to construct and maintain a street railway on the streets designated in said petition, and to enter upon, hold and possess for the purposes and usages set forth in the foregoing petition; and,

"Resolved, further, that the Council hereby reserve unto itself all the rights and privileges granted by City Charter and the laws of the State.

"Ayes: Krakauer, Hart, Ochoa, and Slade."

EXTRACTS FROM MINUTES OF THE CITY COUNSEL OF THE CITY OF EL PASO, TEXAS, MAY 25TH, 1881.[a]

"MAY 25, 1881.

"At a called meeting of the City Council there were present Aldermen Ochoa, Magoffin, Hague and Hart. Absent Mayor Schutz and Aldermen Slade and Krakauer.

"Mr. Juan Ochoa took the chair as Mayor pro tem. * * *

"The map compiled by the City Engineer, Juan S. Hart, was on motion adopted as the official map of the City of El Paso, provided that the same shall not be binding upon those whose land has been dedicated to the City. A copy of the map was ordered filed with the records and papers of the City.

EXTRACTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, JUNE 10TH, 1881.[b]

"MAYOR'S OFFICE, *June 10, 1881.*

"Council met pursuant to adjournment.

"Present Alderman Magoffin, (Mayor pro tem.) Ochoa, Hague, Krakauer, and Slade; also City Attorney Coldwell, and W. M. Carrico, Clerk. Absent: Mayor Schutz and Hart.

"The following resolution was then read and on motion adopted:

'JUNE 10, 1881.

'A resolution granting additional right of way to the Rio Grande El Paso Railway Company.

'BE IT RESOLVED by the City Council of the City of El Paso:

'Section 1: The Rio Grande & El Paso Railway Company shall have the right, warrant and authority to enter upon, hold and use for its right of way purposes all that portion of El Paso Street in said City lying within twenty five feet of the located center line of said Company's road, on either side thereof, as the same is located between the center of the channel of the Rio Grande and the Easterly line of Block No. 61, as such Block is

[a] [Minute Book B, pages 123 and 125. Omitted portion of the minutes irrelevant. Certified copy of the entire proceedings will be produced if desired by the commission.—Agent's note.]

[b] [Minute Book B, pages 132 and 133.—Agent's note.]

shown upon the map of the Campbell's Addition to the City of El Paso, made by Juan Hart, City Engineer, and the Southwest Boundary of the right of way of said railroad heretofore granted. Said right of way hereinbefore granted is more particularly shown upon the map thereof filed with the City Clerk on the first day of June, 1881, to which reference is made.

'Section 2: This resolution shall take effect and be in force from and after its passage.'

"The meeting then adjourned.

(Signed) W. M. CARRICO, *Clerk.*

———————— *Mayor.*"

EXTRACT FROM MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, JULY 27, 1881.[a]

"MAYOR'S OFFICE, *July 27, 1881.*

"Council met this evening pursuant to adjournment.

"Present: His Honor, Mayor Schutz; Aldermen Krakauer, Magoffin, Ochoa and Hague; City Marshall Stoudemeir and City Attorney Coldwell.

"Absent: Aldermen Slade and Hart. * * * *

"On motion the following Ordinance was then adopted:

'An ordinance entitled "An Ordinance to change the metes and bounds of the several wards of the City of El Paso:

'BE IT ORDAINED by the City Council of the City of El Paso:

Section 1. The First Ward shall comprise all that portion of the corporation contained within the metes and bounds as follows: to-wit:—Beginning at a point on the North boundary of the City which would intersect the center of Oregon Street produced; thence in a Southeasterly course along the center line of said street to the center of St. Louis Street; thence on the most direct line to the center of the head of El Paso Street; thence down the center of El Paso street to a point at the intersection of said center of El Paso Street and the center of Sonora Street produced; thence along the center of Sonora Street produced and Sonora Street proper to the center of the Rio Grande; thence up the center of the Rio Grande to the point of intersection with the North boundary of the City; thence along said North boundary to the place of beginning.

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[a] [Minute Book B, pages 148 and 151 to 154. Omitted portion of the minutes irrelevant. Certified copy of the entire proceedings will be produced if desired by the commission.—Agent's note.]

The Second Ward shall comprise all that portion of the corporation contained within the metes and bounds as follows, to-wit:—Beginning in the center of the Rio Grande at the point of intersection with the center of Sonora Street; thence in an Easterly direction along the center of Sonora Street and the prolongation thereof, to the center of El Paso Street; thence up the center of El Paso Street to the intersection of the centers of El Paso and San Antonio Streets; thence along the center of San Antonio Street to the intersection of the centers of San Antonio and Magoffin Streets; thence along the center of Magoffin Street, and of the prolongation thereof to the East boundary of the City; thence South along said boundary to the center of the Rio Grande; thence up the center thereof to the place of beginning.

The Third Ward shall comprise all that portion of the corporation contained within the metes and bounds as follows, to-wit: Beginning on the North boundary of the City at the point of intersection with the center of Oregon Street produced; thence in a Southeasterly course along the center of said Oregon Street produced and the center of Oregon Street proper to the center of St. Louis street; thence on the shortest line from the center of St. Louis Street to the center of the head of El Paso Street; thence in a Southerly course along the center of El Paso Street to the intersection of the center of El Paso and San Antonio Streets; thence in an Easterly course along the center of San Antonio Street to the intersection of the centers of San Antonio and Magoffin Streets; thence along the center of Magoffin Street and the prolongation thereof, to the East boundary of the City; thence along said East boundary to the North boundary of the City, and thence in a Westerly course along said North Boundary to the place of beginning.

Section 2: "This ordinance shall take effect from and after its passage, and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

"Meeting then adjourned to meet Saturday the 30th.

"Approved July 29th, 1881.

S. SCHUTZ, *Mayor.*

Attest:

M. W. CARRICO, *Clerk.*"

EXTRACTS FROM MINUTES OF THE CITY COUNSEL OF THE CITY OF EL PASO, TEXAS, NOV. 12, 1881.[a]

"The City Council met for its regular meeting on above date.

"The Mayor being absent, Alderman Blacker called the Council to order, and proposed Alderman Schuster as Mayor pro tem. to preside at this meeting. The roll of members being called for as first in order, the clerk called the roll which resulted as follows: Mayor Magoffin, absent. Alderman Hague, first Ward, present; Alderman Phillips, First Ward present; Alderman Schuster, Second Ward, present; Alderman Keating, Second Ward present; Alderman Blacker, Third Ward present; Alderman Krakauer, Third Ward, present, the City Marshall, City Clerk and Attorney also in attendance. The clerk announced the result of roll call as all present except Mayor Magoffin. Alderman Blacker re-newed his nomination of Alderman Schuster as Mayor pro tem. to preside at this meeting. Alderman Keating seconded the nomination of Alderman Schuster. Alderman Krakauer nominated Alderman Hague for the same position, the Council then proceeded to ballot for Mayor pro tem; there were six votes cast, of which Alderman Schuster received three votes, Alderman Hague two votes, and ——— one vote. Alderman Schuster having received a majority of all the votes cast took the chair as presiding officer and Mayor pro tem. Minutes of last regular meeting October 22nd, 1881, ready by caption and approved.

"The petition of City Railway Company, presented at called meeting, November 8th, 1881, was also read by request of Alderman Krakauer, the reading of the balance of this called meeting was for the present dispensed with. * * *

"The Committee on streets, grades, etc. to whom was referred the following petition, returned the same with the following report thereon:

'THE PETITION OF THE CITY RAILWAY CO.

"EL PASO, TEXAS. *August 30, 1881.*

To the Mayor & City Council of the City of El Paso:—

Your petitioner, the City Railway Company of El Paso, a corporation duly Chartered and organized under the laws of the State of Texas, as will be seen by Exhibit "A" hereto attached, and made

[a] [Minute Book B, pages 251 and 255, et seq. Omitted portion of the minutes irrelevant. Certified copy of the entire proceedings will be produced if desired by the commission.—Agent's note.]

a part of this petition, respectfully represents that it is organized in good faith to construct and operate street railroads in the City of El Paso, and that for the purpose of constructing and operating same said corporation respectfully petitions for a right of way on the following described streets and public grounds, and to construct on same either single or double track or tracks, and right to lay down sixteen or twenty pounds "T" iron rails on cross ties, and all necessary side tracks and turn tables for the use of cars and the public convenience, to-wit:

FIRST LINE.

'Beginning at the Atchison, Topeka & Santa Fe depot on Santa Fe street; thence Northerly to the intersection of West Overland Street; thence on said Overland or West Overland and East Overland Street East to the Texas & Pacific Depot.

SECOND LINE.

'Beginning at the intersection of St. Louis and Campbell Street, between Blocks 41 and 230, as shown on the map hereto attached and made a part of this petition; thence Southerly on Campbell Street to the river.

THIRD LINE.

'Beginning at the Northeast corner of the Public Square on St. Louis Street and thence on said Street Easterly as far as the City has a right to grant.

'Your petitioners represent that it is willing and prepared to construct the lines of said street railroad, and for the purpose of aiding your petitioner, it respectfully asks that right of way be granted to it on the streets named to be used by said street railroads, provided the said petitioner begins work on said road in ninety days, and constructs and operates at least one mile of said railroad within twelve months from the granting of the right of way prayed for, and that the right of way for the construction of said street railroad to be also granted over or through the alleys ditches water-ways and other public ground for the purposes aforesaid, for a period of fifty years, and that your petitioner be granted right and authority to enter upon and hold, possess and enjoy for the usages and purposes aforesaid the right of way prayed for.

'That this petition be ordered filed among the official papers of said City, and be ordered recorded at length upon the minutes

and books of proceedings of your said City, and that a resolution or ordinance be framed and passed by your Honorable Body fully mentioning and embracing and granting the rights and privileges prayed for; and that the foregoing for the purpose of connecting the town of El Paso in Texas and Paso del Norte in Mexico, promoting and facilitating the travel and intercourse between two said Cities, your petitioners would also pray that it be granted by Your Honorable Body the right of way and the permission to construct from the foot of Santa Fe Street or Campbell Street, a bridge over the Rio Grande; at least all the riparian privileges pertaining to the construction of said bridge needful to said corporation, and within the power of Your Honorable Body to grant, and they will ever pray.

(Signed) S. SCHUTZ.
For City Railway Company of El Paso.

EXHIBIT A.

STATE OF TEXAS,
County of El Paso.

KNOW ALL MEN BY THESE PRESENTS, that we S. Schutz, J. M. Thatcher, J. H. Bates, residents of said County and State, and William J. Kellar of Dallas, said State, and Andrew J. Kellar, resident of Memphis, State of Tennessee, H. R. Brinkerhoff, resident of Fort Bliss, Texas, and Mo. Samaniego, resident of Paso del Norte, Mexico, as associates and signers have and do hereby organize ourselves into a body politic and corporation under the name of the City Railway Company of El Paso for the purpose of constructing, operating and maintaining street railroads in the City of El Paso and said County.

ARTICLE II.

That the legal domicile and place of business of said corporation shall be in the City of El Paso.

ARTICLE III.

That said corporation shall exist and continue for fifty years.

ARTICLE IV.

That the capital stock of said corporation shall be one hundred thousand Dollars, divided into one thousand shares each of the par value of One Hundred Dollars.

ARTICLE V.

That the Board of Directors shall not be less than three for the first year; the following are the names of those appointed: S. Schutz, W. J. Kellar, J. H. Bates, J. M. Thatcher, and Andrew J. Kellar.

ARTICLE VI.

That the Board of Directors shall have authority to do whatever may be deemed necessary within the scope of the laws governing corporations for the successful business of their said Company.

Given under our hands at the City of El Paso, the 18th day of July, 1881.

(Signed) WILLIAM J. KELLAR.
(Signed) SOL. SCHUTZ.
(Signed) J. H. BATES.
(Signed) J. M. THATCHER.
(Signed) ANDREW J. KELLAR.
(Signed) H. R. BRINKERHOFF.
(Signed) MO. SAMANIEGO.

STATE OF TEXAS,
County of El Paso.

On this day personally appeared before me, J. A. Buckler, notary public in and for the County and State aforesaid, Sol. Schutz, Andrew J. Kellar, James H. Bates, each to me well known to be the persons who subscribed to the foregoing instrument, and each acknowledged to me that they have signed and executed the same for the purposes and considerations therein mentioned.

Given under my hand and official seal this the 18th day of July, 1881.

(Signed) J. A. BUCKLER.
[SEAL]. *Notary Public.*

STATE OF TEXAS,
County of El Paso.

This day personally appeared before me, J. A. Buckler, notary public in and for the County and State aforesaid, J. M. Thatcher, H. R. Brinkerhoff, to me well known to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they had executed the same for the purposes and consideration therein named.

Given under my hand and seal of office this the 23rd day of July, 1881.

(Signed) J. A. BUCKLER,
[SEAL] *Notary Public, etc.*

STATE OF TEXAS,
El Paso County.

This day personally appeared before me, J. A. Buckler, notary public in and for the County and State aforesaid, Mo. Samaniego, to me well known to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that they had executed the same for the purposes and consideration therein named.

Given under my hand and seal of office this the 29th day of July, A. D. 1881.

(Signed) J. A. BUCKLER,
[SEAL] *Notary Public, El Paso County.*

STATE OF TEXAS,
County of El Paso.

Before me, A. Harwood, county clerk in and for said County on this day personally appeared William J. Kellar, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Witness my hand and official seal the 12th day of August, A. D. 1881.

[SEAL] (Signed) A. HARWOOD.

Endorsed: "Charter of the City Railway Company of El Paso. Filed in Department of State, September 16th, 1881. Signed T. H. Bowman, Secretary of State."

'STATE OF TEXAS,
Department of State.

I, H. L. Spain, acting Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true copy of the original charter of the City Railway Company of El Paso with endorsements thereon now on file in this department

Witness my official signature and the seal of State at the City of Austin, this 16th day of September, A. D. 1881.

[SEAL OF STATE] (Signed) H. L. SPAIN.
Acting Secretary of State.

"REPORT OF THE COMMITTEE ON STREETS, GRADES AND PUBLIC IMPROVEMENTS.

To the Mayor and City Council of the City of El Paso:—

The undersigned committee on streets, grades and improvements, beg leave to submit our report on the petition of the City

Railway Company of El Paso, Texas, filed on the 8th day of November, A. D. 1881, and referred to your Committee on the same day.

FIRST.

That we find the City Railway Company of El Paso, Texas, is duly chartered under the laws of the State of Texas.

SECOND.

That it is organized in good faith to construct and operate street railways on the streets and public grounds, first class in quality, described in their petition. That said Company has ample means to begin work on said street railways in ninety days and construct and operate one mile in one year from this date.

THIRD

That the granting of the right of way over, through and on the streets and public grounds to said company will not interfere or conflict in any manner with any right of way heretofore granted to any other Company

FOURTH:

We recommend that the following ordinance be passed, calling attention to the fact that we have provided for forfeiture of the grant herein given in case said railway should not be commenced within ninety days in good faith, and have completed and operating one mile of said road in one year, and that work shall be subject to the inspection and acceptance of the City Council or its appropriate committee within a year from this date.

FIFTH.

We finally recommend that said concession and the report, together with ordinance, if passed, be spread and engrossed and approved upon the minutes of the Council. Dated this the 12th day of November, A. D. 1881.

(Signed) A. BLACKER
W. PHILLIPS,
BEN. SCHUSTER
Committee on Streets, Grades, and Improvements.

ORDINANCE NO. 23

An Ordinance granting right of way through certain streets and public grounds of the City of El Paso, Texas, to the City Railway Company of El Paso, Texas, also giving to them certain privileges to build bridges across the Rio Grande, and providing in certain cases, a forfeiture of all its rights and privileges.

BE IT ORDAINED by the City Council of the City of El Paso, that the privilege is hereby granted to City Railway Company of El Paso, Texas, to construct and operate first class street railways and ties, necessary side tracks, switches, turn-outs and turn-tables, and that the rights, privileges and franchises are hereby granted, together with right of way to said street railway company for and during the term of their Charter upon the following streets and public grounds.

FIRST LINE.

Beginning at the Atchison, Topeka & Santa Fe depot on Santa Fe Street, thence North to the Intersection of West Overland Street; thence on said Overland or West Overland Street to the Texas & Pacific Depot.

SECOND LINE.

Beginning at the intersection of St. Louis and Campbell Streets between Blocks No. 41 and 230, as shown on map hereto attached and made a part of this petition; thence Southerly on Campbell Street to the river; thence up the river to Utah Street; thence up said Utah Street Northerly to the Galveston, Harrisburg & San Antonio depot, and the place of beginning.

THIRD LINE.

Beginning at the Southeast corner of Public Square on St. Louis Street; thence on said Street Easterly to Cotton Avenue in said City, or upon such portions of the same as may be completed or in actual and bona fide course of construction within five years from and after the passage of this ordinance, providing work shall be commenced on one of said lines hereinabove described in ninety days from the passage of this ordinance, and that at least one mile of continuous track shall be constructed and operated in such a way as to best satisfy public convenience within the space of one year from and after the passage of this ordinance. And in the event of failure to begin, construct and

operate within the time hereinbefore stated, then said Company shall forfeit all rights and franchises herein granted to them by the City of El Paso.

Section 2: That in constructing the road bed of said street railway upon any of said streets or public grounds within the present or future limits of said City of El Paso, the said Railway Company shall conform to the grade of said streets through which said railway may be constructed, said grade to be determined by the City engineer under the direction of the City Council, and in the construction of any road bed upon any of said streets or public grounds said work is to be done under the supervision of the Committee on streets, grades and improvements, and all of such streets or public grounds shall remain in as good condition after said road bed is put down as before the construction of said road bed.

Section 3: That said Company shall so construct and keep in good condition the road running through any of said streets or public grounds so as not to interfere with or obstruct the passage of vehicles or pedestrians.

Section 4: That said Company is hereby required to observe and abide by all ordinances now or hereafter existing of the City of El Paso not inconsist with the rights herein granted, and pay such taxes as may be properly assessed against them.

Section 5: That the right of way and permission is hereby granted to construct and build a bridge across the Rio Grande from either Campbell or Utah Streets; that is, to the center of the river, in conjunction with such other persons that may obtain legal authority from the Mexican Government, and with a view of fully authorizing and empowering said Company to so build the right of way, all riparian privileges pertaining to the construction of said bridge needful to said Company is hereby granted to the center of the channel of the Rio Grande by the City Council.

Section 6: That this ordinance shall take effect from and after its legal publication.'

Endorsement: "Passed November 12th, A. D. 1881. Regular meeting of said City Council. Approved. Signed B. Schuster, Mayor pro tem. Attest: S. L. Kahn, City Clerk."

"On motion said report was received and accepted, and the Council went into consideration of above ordinance. Alderman Hague moved, and Blacker seconded the motion, that section five of above ordinance be so amended by the insertion of "from either Campbell or Utah Streets" immediately after the words "Rio Grande" in the third line of said section, which amendment was

duly adopted. The section of above ordinance was accordingly corrected as amended.

"Alderman Blacker then moved that report of the Committee and above ordinance reported by them be adopted as amended, which motion was seconded by Alderman Keating.

"The ayes and noes being called for, the roll was called and resulted as follows: Alderman Hague, first ward, not voting. Alderman Phillips, first ward, aye. Alderman Keating, second ward, aye. Alderman Schutz, second ward, aye. Alderman Blacker, third ward, aye. Alderman Krakauer, third ward, aye. Result: six members present, one refused to vote, and five in favor of adopting the report and ordinance granting right of way, etc. to City Railway Company, which the Mayor, pro tem. declared carried and adopted accordingly. * * *

The Council then adjourned to its next regular meeting, November 20, 1881.

Approved: JOSEPH MAGOFFIN, *Mayor.*"

EXTRACT FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, JULY 22, 1882,[a]

COUNCIL ROOMS, *July 22, 1882.*

The Council met pursuant to adjournment, on above date and at appointed hour, Acting Mayor Keating in the chair, who called the members to order and directed the clerk to call the roll which resulted as follows: Mayor Magoffin, absent; Ald. Keating 2d Ward Acting Mayor, present; Ald. Hague 1st Ward, absent; Ald. Phillips 1st. Ward, present; Ald. Schuster, 2d Ward, present; Ald. Blacker, 3rd Ward, present; Ald. Flood, 3rd Ward, present. Being five aldermen present—a Quorum for the transaction of business. Also present City Clerk Kahn, City attorney Buckler and Marshal Gillett.

* * * * * * * *

Ald. Blacker from the Committee on Streets, Grades and Public Improvements, reported back from said committee the following Petition with the recommendation that the prayer therein set forth be granted, to wit:

EL PASO, TEXAS, *July 8, 1882.*

To the Mayor and City Council of the City of El Paso—

Your petitioners John B. Tays, J. Fisher Satherwaite, James Marr and William S. Hills respectfully represent, that they have

[a] [Minute Book "C," p. 97 et seq. Omitted portion of the minutes irrelevant. Certified copy of entire proceedings will be produced if desired by the Commission.—Agent's note.]

associated together for the purpose of constructing and operating street railroads in the City of El Paso, Texas, and erecting bridges across the Rio Grande to promote the extension of said street Railroads, and ask of your body the privilege for the period of fifty years for using for themselves, their successors and assigns certain streets and public grounds hereinafter named for constructing and working said street railroad lines, and erecting and maintaining said bridges. That the streets and public grounds to be used for said street railway lines are as follows:

First line, Beginning at the intersection of El Paso and San Antonio streets, thence eastward along San Antonio street and the street or streets continuous of San Antonio street to the eastern limits of the City.

Second line. Beginning at the intersection of St. Louis and Stanton streets thence southward on Stanton street to Sixth street, thence eastward on Sixth to Virginia street, thence southward on Virginia to the middle of the channel of the Rio Grande.

Third line. Beginning in the middle of the channel of the Rio Grande, where said river is intersected by Leon street, thence northward on Leon street to seventh street, thence eastward on seventh to Oregon street, thence northward on Oregon street to San Francisco street to Little Plaza, thence through Little Plaza to junction of St. Louis and Oregon streets, thence north on Oregon street to the new Boulevard thence westward by the most direct and practicable street or streets to Fort Bliss.

Fourth line. Beginning at the intersection of El Paso and Sixth streets, thence eastward on Sixth street to Cotton Avenue, thence north on Cotton Avenue to Magoffin street or avenue, thence westward on Magoffin street or avenue to San Antonio street.

Fifth line. Beginning at the point where Third street touches the Reservation of the A. T. and Santa Fe R. R. thence east along Third street to the eastern limits of the City.

Sixth line. Beginning at the intersection of Oregon and missouri streets, thence east along Missouri street to the eastern limits of the City. Together with the necessary side tracks, switches, turn outs, curves and turn-tables along all of said lines.

Your Petitioners ask the privilege to construct and maintain during the period aforesaid one bridge, where Leon street runs into the Rio Grande, and another where Virginia street runs into said river,—for the purpose of carrying on said bridges for reasonable tolls,—street cars, vehicles of all kinds, mankind and animals, and that all the necessary riparian rights and privileges to center

of said river be granted petitioners so as effectually build and operate said bridges.

Your petitioners agree that the tracks of all said lines shall conform to the street grades as fixed by authority of the City.

Petitioners state that they are ready to enter into and carry out on their part such contract as the City council may deem just and proper, to insure the building of said street railways and bridges and build the same as soon as they or any of them may be declared by the City Council a public need.

Signed JAMES MARR
WILLIAM S. HILLS
JOHN JULIAN
JOHN FISHER SATTERTHWAITE
J. B. TAYS

It was moved and seconded that the petition of James Marr and others just read be granted, on which motion the aldermen voted as follows: Ald. Keating, Acting Mayor, aye; Ald. Phillips, aye; Ald. Schuster, aye; Ald. Blacker, aye; Ald. Flood, aye; five aldermen voting all in the affirmative and the motion was declared carried, Whence Alderman Blacker introduced the following Ordinance:

An Ordinance granting the right of way and authority to John B. Tays, J. Julien, J. Fisher Satterthwaite, James Marr and William S. Hills to construct and operate street railways through certain streets and public places of the City of El Paso, and to erect and maintain two bridges across the Rio Grande. Be it ordained by the City council of the City of El Paso:

Section 1. That John B. Tays, J. Julien, J. Fisher Satterthwaite, James Marr and William S. Hills, their associates, successors and assignes are hereby authorized to construct and operate for the period of fifty years, street railways with their sidetracks, switches, curves, turnouts and turntables upon and through the streets and public grounds of the City of El Paso, as hereinafter named; and they are hereby authorized to take possession and hold so much of said streets and public grounds as may be necessary for said street railway lines with side tracks, switches, curves, turnouts and turntables as aforesaid.

First Line. Beginning at the intersection of El Paso and San Antonio streets, thence eastward on San Antonio street and the street or streets continuous of San Antonio street to the eastern limits of the city.

Second Line. Beginning at the intersection of St. Louis and Stanton streets, thence southward on Stanton street to Sixth street, thence eastward on Sixth street to Virginia street, thence southward on Virginia street to the middle channel of the Rio Grande.

Third Line. Beginning in the middle of the channel of the Rio Grande, where said river is intersected by the course of Leon street, thence northward on Leon street, Seventh street, thence eastward on Seventh street to Oregon street, thence northward on Oregon street to San Francisco street, thence westward on San Francisco street to the Little Plaza and through said Little Plaza to the junction of St. Louis and Oregon streets, thence north on Oregon street to the new Boulevard and thence westward by the most direct and practicable street or streets to Fort Bliss.

Fourth Line. Beginning at the intersection of El Paso and Sixth streets, thence eastward on Sixth street to Cotton Avenue, thence north on Cotton Avenue to Magoffin Avenue or street, thence westward on Magoffin street or avenue to San Antonio street.

Fifth Line. Beginning at the point where Third street touches the reservation of the A. T. and Santa Fe R. R., thence east along Third street to eastern limits of the City.

Sixth Line. Beginning at the intersection of Oregon and Missouri streets, thence east along Missouri street to the eastern limits of the City, together with the necessary side tracks, switches, turnouts, curves and turntables along said lines.

Section 2. That in constructing the roadbeds of said railways upon any of said streets or public grounds, the same shall conform to the grade of such street as it may be established by authority of the City, and all that portion of said streets and public grounds occupied for said street railroad purposes shall remain in as good condition as before except as may be necessarily impaired by said roadbed.

Section 3. That said petitioners and their successors and assigns shall maintain in good condition the roadbed running through any of said streets or public grounds, so as not to obstruct the travel of vehicles or pedestrians.

Section 4. That petitioners, their successors and assigns are hereby required to observe and abide by all ordinances now or hereafter existing of the City of El Paso, not inconsistent with the rights herein granted, and pay such taxes as may be properly assessed against them.

Section 5. That the right of way and authority is hereby granted to said petitioners, their successors and assigns to con-

struct and maintain two bridges on the Rio Grande to the middle of said river's channel, as follows: One of said bridges at the point where Leon street runs into and reaches the center of said river, the other bridge at the point where Virginia street crosses the said river's channel, including in this privilege all the riparian necessary to erect and maintain said bridges, and to connect said several lines and others that may be authorized with any lines of street railway of the city of Paso del Norte in state of Chihuahua, Mexico, to construct street car tracks on said bridges and fit ways for passage of all kinds of vehicles, mankind and animals, and to take toll for crossing of same not to exceed following rates:

Vehicles of 2 horses and more, Vehicles of 1 horse, Horseman, Animals per head, Pedestrians each,

SECTION C. That this ordinance shall take effect and be in force from and after its passage.

It was moved by Alderman Blacker and seconded by Ald. Phillips that the rules be suspended in order to put this ordinance on its final passage, the aldermen voting on this motion as follows: Ald. Keating, Actg. Mayor, aye; Ald. Phillips, aye; Ald. Schuster, aye; Ald. Blacker, aye; Ald. Flood, aye, and the rules were suspended accordingly and the passage and adoption of said ordinance was now in order. It was therefore moved by Alderman Blacker and seconded by Ald. Phillips that this ordinance be adopted and passed, upon which motion the aldermen present voted as follows: Ald. Keating, Actg. Mayor, aye; Ald. Schuster, aye; Ald. Phillips, aye; Ald. Blacker, aye; Ald. Flood, aye; and Ald. Flood explained why he so voted. There were five votes cast all in favor of the adoption and passage of this ordinance, and said ordinance was declared by the Acting Mayor passed.

Alderman Blacker now moved that the vote just recorded be reconsidered and that the motion to so reconsider be laid on the table; said motion being seconded by Alderman Schuster it was put by his honor before the Council and the aldermen voted as follows: Ald. Keating, Act. Mayor, aye; Ald. Phillips, aye; Ald. Schuster, aye; Ald. Blacker, aye; Ald. Flood aye; five votes cast and all in favor of the motion, and his honor declared the motion carried and therefore the motion to reconsider to lay on the table.

* * * * * * *

And the Council adjourned

Approved PAUL W. KEATING, *Mayor Pro tem*

Attest

S. L. KAHN, *City Clerk.*

THE MINUTES OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, JULY 25, 1885,[a]

COUNCIL ROOM, *July 25, 1885.*

Council met pursuant to adjournment above date at the appointed time. Alderman Buchanon, Mayor pro tem in the chair directed the roll called. Present Alderman, Dougher, Dieter, Schuster, Hills, Bassett, Deputy Marshal Johnson present. Minutes of preceding meeting read and approved.

The clerk instructed not to notify the Water Company to place hydrant on Oregon Street until after next meeting of the Council.

Moved and seconded—That the Council proceed with the matter of redistricting the city into four wards. Carried.

A petition of many citizens protesting against the redistricting the city into four wards was read.

Moved by Alderman Schuster and seconded by Alderman Dougher, That the city be divided into four wards. Carried.

The following ordinance read:

An Ordinance to divide the city into four wards, to create a ward to be known as the 4th ward, and define its boundary lines and to change and conform the boundary lines of the three wards of El Paso city, Texas, with the boundary lines of the 4th ward.

Be it ordained by the City Council of the City of El Paso, That the Corporation of said city shall be divided into four wards. That a new ward is hereby created and established, in said city, which shall be known as the 4th ward, and which shall contain all that part of said corporation, lying and being within the following metes and bounds as follows:

Beginning at the head center of El Paso street where it is intersected by the center of San Francisco street, thence in a westerly direction along the center of said San Francisco street to the middle of the Rio Grande, thence up the Rio Grande to the northern boundary line of said city, thence along the north boundary line of said city, to where it intersects the center of Utah, thence in a southerly direction along the center of Utah street to the center of St. Louis street, thence in a westerly course along the center of St. Louis street to where the center of Oregon street intersects it, thence in a direct line to the head of El Paso street, the place of beginning. The first ward shall contain all that part of the said corporation lying within the following bounds to wit:

Beginning at the head center of El Paso street where it intersects the center of San Francisco street, thence southerly along the center of El Paso street to the middle of the Rio Grande, thence up the

[a] [Minute book "C," p. 575, et seq.—Agent's note.]

river along the middle thereof to where the center of San Francisco street is intersected, thence in an easterly course along the center of San Francisco street to the head center of El Paso street, the place of beginning.

The second ward shall contain all that part of said city lying and being within the following metes and bounds:

Beginning at the intersection of the center lines of El Paso street and San Francisco street, thence southward along the center line of El Paso street to the middle of the Rio Grande, thence southeasterly along the center of said river to the eastern boundary line of said city, thence north along the said eastern boundary line of said city to the center of Elm Street produced, thence westerly along center line of said Elm street produced to the center of Mogoffin Avenue, thence westerly along the center line of Mogoffin Avenue to the center line of San Antonio street and westward along the center of San Antonio street to the center of El Paso street, the place of beginning.

The third ward shall contain all that part of said city lying and being within the following metes and bounds, to wit:

Beginning at the point where the center line of Utah street intersects the center line of St. Louis street, thence in a northerly direction along the center line of Utah street to the north boundary line of the city, thence in an easterly course along the north line of said city to the eastern line thereof, thence in a southerly direction along the east line of said city to where the center of Elm street prolonged would intersect it, thence on a line with the center of Elm street produced to its intersection with Mogoffin Avenue, thence along the center of Mogoffin Avenue to the center of San Antonio street, thence along the center of San Antonio street to the center of El Paso street, thence northerly along the center of El Paso street to the center of San Francisco street, thence in a direct line to the point where the center of St. Louis street intersects the center of Oregon street, thence easterly along the center of St. Louis street to where it intersects the center of Utah street, the place of beginning.

That all Ordinances and parts of Ordinances in conflict with this Ordinance or any part thereof are hereby repealed.

That the Ordinance shall take effect and be in force from and after passage and approval.

Approved

(Signed) S. H. BUCHANON *Mayor protem*

Attest

O. B. BEALL

Moved and seconded that the Ordinance as read be adopted. Carried by the following vote, Dougher aye, Diter aye, Schuster aye, Hills aye, Bassett aye, Buchanan no.

Council adjourned.

Mayor protem.

Attest

O. B. BEALL, *City Clerk*

PROCEEDINGS OF A MILITARY COMMISSION CONVENED AT FRANKLIN, TEXAS, ON THE 8TH OF DECEMBER, 1864.[a]

Proceedings of a Military Commission which convened at Franklin Texas on the 8th of December 1864 by virtue of the following order—viz:

Hd Qrs. Dept of New Mexico Franklin Texas Dec. 8th 1864
Special Orders No. 46

EXTRACT

* * * * * * *

VI. A Military Commission to consist of Colonel George W. Bowie, Captain Charles A. Smith 5th Infantry California Volunteers and 1st Lieut Charles Newbold 5th Infantry U. S. Army, will assemble at Franklin, Texas, at 12 o'clock. M. on the 8th inst. to set apart, and define by metes and bounds, one eighth part of the tract of land known as the Ponce Grant, on which the town of El Paso, in the County of El Paso, and State of Texas, is situated, and one eighth part of the Unsold Lots and Blocks in the said town of El Paso, which one eighth part of this property now undivided belongs to the Hon. John S. Watts, of Santa Fe N. M. who desires to cultivate and improve his portion of said property as soon as it has been thus defined. This partition will remain in full force and effect as long as this part of Texas remains under Martial law.

By command of Brig Genl. Carleton

ERASTUS W. WOOD
Aide-de-Camp

Franklin Texas
Decr. 8th 1864. 12 o'clock M.

The Commission met pursuant to the above order, but in the absence of necessary Surveys and Documents, adjourned till 10 o'clock A. M. on the 13th inst.

Franklin Texas Decr. 13th 1864 10 o'clock A. M.

The Commission met pursuant to the above order and to adjournment, & proceeded to the business before it. After a care-

[a] [Taken from the original report on file in the War Department.—Agent's note.]

ful examination of the Survey and the land in question the Commission decides that the Survey to set apart to the Hon. John S. Watts one eighth part of the tract of land known as the Ponce Grant on which the town of El Paso, County of El Paso, and State of Texas, is situated, shall commence at the point where the eastern boundary of said Tract as surveyed by Anson Mills, Deputy District Surveyor, Survey No. 145, Strikes the Rio Grande, and follows up the bank of said River a distance of Three Hundred and two (302) Varas to a point where the South west corner of said one eighth part of Hon. John S. Watts shall be established, thence North 26½° West parallel with the Eastern boundary of said Survey (No. 145) to the point where this line shall intersect the Northern boundary of said Survey (No. 145), thence North 53° East with the boundary line and to the North East corner of said Survey (No. 145), thence South 26½° East to the place of beginning.

And the Commission further assigns to the Hon John S. Watts, the following unsold Blocks and Lots in the said town of El Paso, as his one eighth part of the unsold Blocks and lots in the said town of El Paso—viz Blocks Nos. 25, 31, and 46. and Lots Nos. 122, 128, and 133 in Block No. 30, and Lots Nos 182, 183, 184, 185, 188, 189, and 209 in Block No. 47.

CHARLES NEWBOLD, 1st Lt. 5th Inf Recorder
G. W. BOWIE, Col. 5th Cal. Infty. President

There being no further business before it, the Commission adjourned sine die

CHARLES NEWBOLD, 1st Lt. 5th Inf Recorder
G. W. BOWIE, Col. 5th Cal. Infty. President

CONCESSIONS GRANTED BY MEXICAN GOVERNMENT FOR CONSTRUCTION OF BRIDGES ACROSS RIO GRANDE BETWEEN EL PASO, TEXAS, AND JUAREZ, CHIHUAHUA.

CONTRACT OF SEPTEMBER 27, 1901, BETWEEN GENERAL MENA AND PEDRO ARMENDÁREZ, FOR THE CONSTRUCTION OF A RAILROAD IN THE STATE OF CHIHUAHUA, FROM JUAREZ TO THE MIDDLE OF THE RIO GRANDE.

[A seal reading: Secretaría de Comunicaciones y Obras Públicas Mexico.]

SECCION SEGUNDA

Tres estampillas por valor en junto de quince pesos, debidamente canceladas.

CONTRATO

Celebrado entre el Ciudadando General Francisco Z. Mena, Secretario de Estado y del Despacho de Comunicaciones y Obras Públicas, en representación del Ejecutivo de la Unión, y el Ciudadano Pedro M. Armendáriz, para la construcción de un Ferrocarril en el Estado Chihuahua.

ART. 1° Se autoriza al Ciudadano Pedro M. Armendáriz para que por su cuenta ó por la de la Compañía ó Compañías que al efecto organice, construya y explote por el término de cincuenta años, conforme á las prevenciones de la ley sobre Ferrocarriles fecha 29 de Abril de 1899, un Ferrocarril que partiendo de Ciudad Juárez (Chihuahua) llegue á la línea media del Río Bravo del Norte que sirve de límite entre México y los Estados Unidos del Norte.

ART. 2° Queda facultado el Concesionario para construir en la parte de dicho río que corresponde á la República Mexicana, la sección de un Puente de madera ó fierro que uniéndose á la que se construya en la parte del mismo río que corresponde á los Estados Unidos del Norte, permita no sólo el paso de la vía férrea mencionada en el artículo anterior, sino también el de los peatones y vehículos.

ART. 3° Queda expresamente estipulado que las obras que se ejecuten para el establecimiento del Puente no han de dar lugar á la acumulación de basuras ni entorpecerán el libre curso de las aguas.

ART. 4° Luego que esté construído todo el Puente Internacional sobre el Río Bravo se marcará por el Concesionario con toda precisión el punto por donde pase la línea divisoria, debiendo practicarse esa operación de acuerdo con la Comisión Mixta de Límites.

ART. 5° El Concesionario comenzará á los tres meses el reconocimiento de la línea que se le concede, dando aviso á la Secretaría de Comunicaciones, con quince días de anticipación, del tiempo y lugar en que hayan de comenzarse los estudios del terreno.

ART. 6° Queda obligado el Concesionario á recabar en el mismo plazo de tres meses el permiso respectivo del Ayuntamiento de Ciudad Juárez, para la ocupación de la parte de terreno perteneciente á aquel Municipio que exija la construcción del Puente y de la vía férrea con sus dependencias hasta la calle llamada del Ferrocarril de Ciudad Juárez.

ART. 7° El Concesionario ó la Compañía que organice deberá terminar la vía férrea y el Puente materia de este Contrato, á los dos años.

ART. 8° La anchura de la vía entre los bordes interiores de los rieles será de un metro cuatrocientos treinta y cinco milímetros.

El peso de los rieles y los radios de las curvas, serán fijados por la Secretaría de Comunicaciones.

La tracción se hará por electricidad.

ART. 9° El Puente, según se expresa en el artículo 2° de este Contrato, será de madera ó fierro y reunirá los requisitos de duración, resistencia y seguridad conforme á los planos que apruebe la Secretaría de Comunicaciones, y la capacidad, amplitud, así como la ubicación respectiva, se mencionará en dichos planos.

ART. 10° La Empresa contribuirá mensualmente desde luego y por todo el término de la concesión, con la cantidad de treinta pesos para la Inspección técnica y Administrativa del Ferrocarril.

ART. 11° La Empresa tendrá su domicilio principal en Ciudad Juárez, Chihuahua.

ART. 12° La Empresa podrá importar libre de toda clase de derechos de importación ó Aduana y de impuestos ya sean éstos federales ó locales por la cantidad limitada que fije la Secretaría de Comunicaciones para la construcción y equipo por una sola vez, del Ferrocarril y línea telegráfica ó telefónica y sus accesorios, los artículos á que se refiere el artículo 74 de la Ley sobre Ferrocarriles.

ART. 13° La Empresa cobrará por transporte de cada pasajero diez centavos, y para el servicio de carga someterá oportunamente á la Secretaría de Comunicaciones las tarifas respectivas, las cuales, una vez aprobadas, no podrán alterarse sin previo permiso de la misma Secretaría.

ART. 14° El Concesionario se obliga á dejar libre el paso por el Puente á personas y vehículos de todas clases sin exigirles derecho de paso.

ART. 15° El depósito de tres mil pesos constituído por la Empresa en la Tesorería General de la Federación en Bonos de la Deuda Pública Consolidada, garantiza el cumplimiento de las obligaciones que contrae el Concesionario por el presente Contrato

México, Septiembre veintisiete de mil novecientos uno.—*Francisco Z. Mena.*—Rúbrica.—*P. M. Armendáriz.*—Rúbrica.

Es copia. México, Septiembre 27 de 1901.

SANTIAGO MÉNDEZ,
Subsecretario.

[Translation]

Contract

Entered into between Citizen General Francisco Z. Mena, Secretary of State and of the Office of Communications and Public Works, as representative of the Executive of the Union, and the Citizen Pedro M. Armendariz, for the construction of a Railroad in the State of Chihuahua.

Article 1st. Citizen Pedro M. Armendariz is authorized for his own account or for account of the Company or companies which he may organize for such purpose to construct and exploit for the term of fifty years, in accordance with the provisions of the Law of Railroads, dated April 29th, 1899, a Railroad beginning at Ciudad Juarez (Chihuahua) and reaching to the middle line of the Rio Bravo del Norte which serves as boundary between Mexico and the United States del Norte.

Article 2nd. The concessioner is empowered to construct upon that part of said River which belongs to the Mexican Republic the section of a wooden or iron bridge, which, uniting with that to be constructed upon that part of the same river belonging to the United States of the North, will permit not only the passage of the railroad mentioned in the foregoing article, but also of pedestrians and vehicles.

Article 3d. It is expressly stipulated that the works which may be executed for the establishment of the bridge shall not cause the accumulation of rubbish or interfere with the free course of the waters.

Article 4th. As soon as the entire International bridge over the Rio Bravo is completed the Concessioner shall with all precision mark the point over which the boundary line passes, which operation is to be performed by agreement with the Mixed Boundary Commission.

Article 5th. The Concessioner shall within three months begin the survey of the line granted to him, giving fifteen days notice in advance to the Department of Communications of the time and place at which the surveys of the land are to commence.

Article 6th. The Concessioner is obliged to obtain, within the said period of three months, from the Ayuntamiento of Ciudad

Juarez, the respective permit for the occupation of such part of the land belonging to the said Municipality required for the construction of the bridge and railroad and its dependencies up to the Street called Ferrocarril of Ciudad Juarez.

Article 7th. The Concessioner or the Company which he organizes, shall complete the railroad and the bridge, subjects of this contract, within two years.

Article 8th. The width of the track between the inside edges of the rails, shall be one meter four hundred and thirty-five millimeters.

The weight of the rails and the radius of the curves, shall be fixed by the Department of Communications.

The traction shall be by electricity.

Article 9th. The bridge, as stated in Article 2nd of this contract, shall be of lumber or iron and have the requisites of durability, resistance and security in accordance with the plans to be approved by the Department of Communications, and the capacity, extent and the respective location shall be mentioned in said plans.

Article 10th. The Enterprise shall contribute monthly, from the present moment and during the whole term of the concession, the sum of Thirty Dollars for the technical and administrative Inspection of the railroad.

Article 11th. The Enterprise shall have its principal domicil at Ciudad Juarez, Chihuahua.

Article 12th. The Enterprise may import free of importation or Custom House duties and federal or local taxes, to the limited amount fixed by the Department of Communications, for the construction and equipment once only of the railroad and telegraph or telephone line and its accessories, the articles referred to in Article 74 of the Law of Railroads.

Article 13th. The Enterprise shall charge ten cents for the transportation of each passenger, and for freight services it shall in due time submit to the Department of Communications the respective tariff rates, which once being approved cannot be altered without the previous permission of the said Department.

Article 14th. The Concessioner obligates himself to give free passage over the bridge to persons and vehicles of all classes without demanding.toll therefor.

Article 15th. The deposit of three thousand dollars made by the Enterprise in the General Treasury of the Federation in Bonds of the Consolidated Public Debt, guarantees the fulfillment of the

obligations contracted by the Concessioner by the present contract.

Mexico, September 27th, 1901.

FRANCISCO Z. MENA.
P. M. ARMENDARIZ.

CONTRACT OF FEBRUARY 11, 1902, REVISING THE CONTRACT OF SEPTEMBER 27, 1901, BETWEEN GENERAL MENA AND PEDRO ARMENDÁRIZ, FOR THE CONSTRUCTION OF A RAILROAD IN THE STATE OF CHIHUAHUA, FROM JUAREZ TO THE MIDDLE OF THE RIO GRANDE.

Un sello que dice.—Secretaría de Comunicaciones y Obras Públicas.—México.—Sección Segunda.—Cuatro estampillas por valor en junto de veinte pesos debidamente canceladas—

Contrato celebrado entre el C. General Francisco Z. Mena, Secretario de Estado y del Despacho de Comunicaciones y Obras Públicas, en representación del Ejecutivo de la Unión y el C. Pedro M. Armendariz, concesionario del Ferrocarril de Ciudad Juárez, Chihuahua, reformando algunos artículos del contrato de conceción relativo fecha 27 de Septiembre de 1901, modificado en 6 de Enero del corriente año, el cual quedará en la forma que sigue:

Artículo Primero.—Se autoriza al C. Pedro M. Armendariz, para que por su cuenta ó la de la Compañia que organice al efecto, construya y explote por el término de noventa y nueve años, conforme á las provenciones de la Ley sobre Ferrocarriles, fecha 29 de Abril de 1899, un ferrocarril que partiendo de Ciudad Juárez, Chihuahua, llegue á la línea media del Rio Bravo del Norte que sirve de límite entre México y los Estados Unidos del Norte.

Artículo Segundo.—Queda facultado el concesionario para construir en la parte de dicho rio que corresponde á la República Mexicana, la sección de un puente de madera ó fierro, que uniéndose á la que se construya en la parte del mismo rio que corresponde á los Estados Unidos del Norte, permita no sólo el paso de la via férrea mencionada en el artículo anterior, sino tambien el de peatones y vehículos; en el concepto de que si el puente de que se trata se construye de madera, queda obligado el concesionario á substituirlo por otro permanente de fierro, dentro del término de diez años.

Artículo Tercero.—Queda expresamente estipulado que las obras que se ejecuten para el establecimiento del puente, no han de dar lugar á la acumulación de basuras ni entorpecerán el libre curso de las aguas.

Artículo Cuarto.—Luego que esté construido todo el puente internacional sobre el Rio Bravo, se marcará por el concesionario con

toda precisión el punto por donde pase la línea divisoria, debiendo practicarse esa operación de acuerdo con la Comisión Mixta de Límites.

Artículo Quinto.—El concesionario comenzará dentro del plazo de nueve meses el reconocimiento de la línea que se le concede, dando aviso a la Secretaría de Comunicaciones, con quince dias de anticipación, del tiempo y lugar en que hayan de comenzarce los estudios del terreno.

Artículo Sexto.—Queda obligado el concesionario á recabar en el mismo plazo de nueve meses de que habla el artículo anterior, el permiso respectivo del Ayuntamiento de Ciudad Juárez para la ocupación de la parte de terreno perteneciente á aquel Municipio que exija la construcción del puente y de la via férrea con sus dependencias.

Artículo Septimo.—El concesionario ó la Compañia que organice, deberá terminar la via férrea y el puente materia de este contrato, á los dos años y nueve meses.

Artículo Octavo.—La anchura de la via entre los bordes interiores de los rieles, será de un metro cuatrocientos treinta y cinco milímetros.

El peso de los rieles y los radios de las curvas, serán fijados por la Secretaría de Comunicaciones.

La tracción se hará por eléctricidad.

Artículo Noveno.—El puente, según se expresa en el art. 2° de este contrato, será de madera ó fierro y reunirá los requisitos de duración, resistencia y seguridad conforme á los planos que apruebe la Secretaría de Comunicaciones, y la capacidad, amplitud, así como la ubicación respectiva, se mencionará en dichos planos.

Artículo Décimo.—La Empresa contribuirá mensualmente, desde luego y—por todo el término de la concesión, con la cantidad de treinta pesos—para la inspección tecnica y administrativa del ferrocarril.

Artículo Once.—La Empresa tendrá su domicilio principal en Ciudad Juárez, Chihuahua.

Artículo Doce.—La empresa podrá importar libre de toda clase de derechos de importacion ó aduana y de impuestos, ya sean éstos federales ó locales, por la cantidad limitada que fije la Secretaría de Comunicaciones, para la construcción y equipo, por una sola vez, del ferrocarril—y línea telegráfica o telefónica, y sus accesorios, los artículos á que se refiere el art. 74 de la Ley sobre Ferrocarriles.

Artículo Trece.—La Empresa cobrará por transporte de cada pasajero,—diez centavos y para el servicio de carga someterá oportunamente á la Secretaría de Comunicaciones las tarifas respectivas las cuales, una vez aprobadas, no podran alterarse sin previo permiso de la misma Secretaría.

Artículo Catorce.—Queda facultado el concesionario para cobrar por el paso de peatones y vehículos por el puente, y en el caso de que haga uso de esta facultad deberá someter á la aprobación de la Secretaría de Comunicaciones, con la anticipación necesaria, las tarifas á que ha de sujetarse ese servicio, no pudiendo ser alteradas las que se aprueben si no es con la previa autorización de la misma Secretaría.

Artículo Quince.—En conformidad con lo dispuesto en el art. 29 de la Ley sobre Ferrocarriles, no se hará durante el término de diez años otro contrato para construir otro ferrocarril y puente paralelo al que es materia este contrato, dentro de una zona de doscientos metros á cada lado del mismo y siempre que se trate de un tranvia de igual carácter sin que por esto se ataquen derechos adquiridos por otras Empresas anteriores.

Artículo Dieciseis.—El depósito constituido por la Empresa en la Tesoreria de la Federación, en Bonos de la Deuda Pública Consolidada, garantizan el cumplimiento de las obligaciones que contrae el concesionario por el presente contrato. (de $3.000.00 tres mil pesos)

México, Febrero once de mil novecientos dos.—Francisco Z. Mena.—rúbrica.—P. M. Armendariz.—rúbrica.

Es copia.—México. Febrero 11 de 1902.—Santiago Méndez.—Subsecretario.

[Translation.]

(A seal reading: Department of Communications and Public Works.—Mexico.—Section second. Four stamps representing a total value of $20, duly canceled.)

Contract concluded between General Francisco Z. Mena, Secretary of Communications and Public Works, representing the National Executive, and Pedro M. Armendáriz, Concessioner of the railroad of Juárez City, Chihuahua, revising certain articles of the concession contract on the subject, dated September 27, 1901, and modified on January 6 of the present year, which shall be in the following form:

ART. 1. Pedro M. Armendáriz is authorized, on his own account or on account of the Company which he organizes for the purpose, is authorized to construct and operate, for a period of ninety-nine years, in accordance with the provisions of the Law on Railroads,

dated April 29, 1899, a railroad which, starting from Juárez City, Chihuahua, shall reach to the median line of the Río Grande, which serves as a boundary between Mexico and the United States of America.

ART. 2. The concessioner is authorized to construct, at the part of said river which corresponds to the Mexican Republic, the section of a bridge of wood or iron which, joining that constructed on the part of the same river belonging to the United States of America, shall permit not only the passage of the aforementioned railroad, but also that of pedestrians and vehicles; it being understood that if the bridge in question is constructed of wood, the concessioner shall be obliged to substitute in its place another permanent bridge of iron within a period of ten years.

ART. 3. It is expressly stipulated that the works executed for the establishment of the bridge shall not give rise to the accumulation of refuse or obstruct the free course of the waters.

ART. 4. As soon as the whole international bridge over the Río Grande is constructed, the concessioner shall mark with absolute precision the point where the boundary line passes, this operation being carried out in agreement with the Mixed Boundary Commission.

ART. 5. The concessioner shall begin within nine months to survey the line granted to him, giving notice to the Department of Communications, fifteen days in advance, of the time and place for beginning the studies of the ground.

ART. 6. The concessioner is obliged to obtain, within the said period of nine months mentioned in the foregoing article, the permission of the City Council of Juárez for the occupation of the part of land belonging to that municipality and required for the construction of the bridge and of the railroad and its appurtenances.

ART. 7. The concessioner, or the Company which he may organize, must complete the railroad and bridge to which this Contract relates within two years and nine months.

ART. 8. The breadth of the tracks between the interior edges of the rails shall be 1 meter 435 milometers.

The weight of the rails and the radius of the curves shall be fixed by the Department of Communications.

The traction shall be by electricity.

ART. 9. The bridge, as stated in Art. 2 of this Contract, shall be of wood or iron and combine the requisites of duration, strength, and safety in accordance with the plans to be approved by the

Department of Communications, and the capacity, amplitude, and respective location shall be mentioned in said plans.

ART. 10. The Company shall contribute, at once and throughout the period of the concession, a monthly sum of $30 for the technical and administrative inspection of the railroad.

ART. 11. The Company shall have its principal domicile at Juárez City, Chihuahua.

ART. 12. The Company may import, free of all manner of import or customs duties, or of Federal or local taxes, to a limited amount to be fixed by the Department of Communications, for the construction and equipment, for one single time, of the railroad and the telegraph or telephone line and their accessories, the articles referred to in Art. 74 of the Law on Railroads.

ART. 13. The Company shall collect ten cents for the transportation of every passenger, and for the freight service it shall submit in due time to the Department of Communications the respective schedules, which, when approved, shall not be altered without the previous permission of the said Department.

ART. 14. The concessioner is authorized to charge for the passage of pedestrians and vehicles over the bridge, and in case it makes use of this authorization, it must submit to the approval of the Department of Communications, a due time in advance, the rates of these charges, and when the rates are once approved they shall not be altered without the permission of said Department.

ART. 15. In accordance with the provisions of Art. 29 of the Law on Railroads, there shall not be concluded, during the period of ten years, another contract to construct another railroad and bridge parallel to the one to which this Contract relates, within a zone of 200 meters on either side thereof, provided it is a question of a tramway of like character, but nevertheless rights acquired previously by other companies shall not be impaired.

ART. 16. The deposit [a] made by the Company in the Treasury of the Federation, in bonds of the Consolidated Public Debt, guarantee the fulfilment of the obligations contracted by the concessioner under the present Contract.

Mexico, February 11, 1902.

FRANCISCO Z. MENA. (Rúbric)
P. M. ARMENDÁRIZ (Rúbric)

A copy. Mexico, February 11, 1902.

SANTIAGO MENDEZ,
Assistant Secretary.

[a] [$3,000.]

CONTRACT OF OCTOBER 21, 1903, BETWEEN LEANDRO FERNANDEZ, SECRETARY OF STATE, COMMUNICATIONS AND PUBLIC WORKS, AND HARRY T. EDGAR, FOR ADMINISTRATION OF INTERNATIONAL BRIDGES BETWEEN EL PASO AND JAUREZ.

Un sello que dice.—Secretaría de Comunicaciones y Obras Públicas.—México.—Sección Segunda.—Estampillas por valor de quince pesos debidamente canceladas.—CONTRATO celebrado con arreglo á la Ley sobre Ferrocarriles, fecha 29 de Abril de 1899, entre el C. Leandro Fernández, Secretario de Estado y del Despacho de Comunicaciones y Obras Públicas, en representación del Ejecutivo de la Unión, y el Se Harry T. Edgar en la de la Compañía de Tracción del Paso y Juárez (El Paso and Juarez Tracción Company) para la explotación de los puentes Internacionales y Tranvias Urbanos de aquella Ciudad, de que es poseedora dicha Compañía.

Artículo Primero.—Las vias urbanas de Ferrocarril establecidas en Ciudad Juárez en virtud de las concesiones otorgadas por el Gobierno del Estado de Chihuahua, con fechas 23 de Julio de 1882 y 16 de Diciembre de 1887, reformadas ambas en 8 de Noviembre de 1888 y adquiridas por traspaso por la Cia. de Tracción del Paso y Juárez, así como los puentes Internacionales con su Ferrocarril, establecidas sobre el Rio Bravo del Norte en la mencionada Ciudad Juárez, en virtud de las concesiones otorgadas por el Gobierno Federal con fechas 24 de Enero de 1882 y 1° de Mayo de 1888, que tambien adquirió por traspaso la citada Compañía, se regirán y quedarán unicamente sujetas á las estipulaciones contenidas en los artículos siguientes:

Artículo Segundo.—Se autoriza á la Cia. de Tracción del Paso y Juárez (El Paso Juárez and Tracción Company) para que por su cuenta ó por la de la Cia., que organice al efecto, continúe explotando por el término de ochenta y cinco años con arreglo á las prevenciones de la Ley sobre Ferrocarriles fecha 29 de Abril de 1899, las vias urbanas de ferrocarril establecidas en Ciudad Juárez y dos puentes Internacionales sobre el Rio Bravo del Norte en quella Ciudad, de que es poseedora actual dicha Compañía, y á los cuales se refiere el artículo anterior.

Artículo Tercero.—Queda obligada la Cia., á substituir por una estructura metalica dentro del término de diez años, la de madera existente del Puente Internacional establecido sobre el Rio Bravo del Norte en la prolongación de la Avenida Lerdo, últimamente reconstruido.

Artículo Cuarto.—El servicio de las vias ferreas urbanas y de las establecidas sobre los puentes, se hará por tracción eléctrica.

Artículo Quinto.—La Empresa contribuirá mensualmente, desde luego y por todo el término de la concesión, con la suma de cincuenta pesos para el fondo de inspección de ferrocarriles.

Artículo Sexto.—La Empresa tendrá su domicilio principal en Ciudad Juárez. Chihuahua.

Artículo Septimo.—La Empresa podrá importar libre de toda clase de derechos de importación y de aduana, y de impuestos ya sean estos federales ó locales por la cantidad limitada que fije la Secretaría de Comunicaciones para la construcción y equipo, por una sola vez, del ferrocarril y línea teléfónica ó telegráfica y sus accesorios, los artículos á que se refiere el artículo 74 de la Ley sobre Ferrocarriles.

Artículo Octavo.—La Empresa cobrará por transporte de cada pasajero diez centavos y parar el servicio de carga someterá oportunamente á la Secretaría de Comunicaciones las tarifas respectivas, las cuales una vez aprobadas, no podrán alterarse sin previo permiso de la misma Secretaría.

Artículo Noveno.—Queda facultada la Empresa para cobrar por el paso de peatones y vehículos por el puente, y en el caso de que haga uso de esta facultad, deberá someter á la aprobación de la Secretaría de Comunicaciones, con la anticipación necesaria, las tarifas á que ha de sujetarse este servicio, no pudiendo ser alteradas, si no es con la previa autorización de la Secretaría.

Artículo Décimo.—De conformidad con lo dispuesto en el artículo 29 de la Ley sobre Ferrocarriles, no se hará durante el termino de diez años, otro contrato para construir otros puentes destinados á vias férreas urbanas, dentro de una zona de doscientos metros á cada lado de los dos puentes, materia de este contrato.

Artículo Once.—Queda insubsistente el contrato de 11 de Febrero de 1902, por el cual se habia autorizado el establecimiento de un ferrocarril en Ciudad Júarez y un puente internacional sobre el Rio Bravo del Norte, contrato que adquirió la Compañía por traspaso que fué aprobado por la Secretaría de Comunicaciones y Obras Públicas.

Artículo Doce.—Los Inspectores y Empleados Federales en comisión del servicio, así como toda clase de efectos del Gobierno Federal, tendrán el paso gratis por los puentes y vias férreas, previa órden de la Autoridad correspondiente.

Artículo Trece.—De conformidad con lo establecido en la fracción II del artículo 18 de la Ley sobre Ferrocarriles ya mencionada, los derechos de la Federación, serán los primeros y preferentes á

los que el Gobierno del Estado de Chihuahua se reserve en los contratos que celebre con la Compañía sobre las vias férreas urbanas de que se trata.

Artículo Catorce.—Para garantizar el cumplimiento de las obligaciones que contrae la Compañía por el presenta contrato, continuará el depósito de $3.000.00 tres mil pesos en Bonos de la Deuda Pública Consolidada que está constituido en la Tesorería General de la Federación, conforme al artículo 16 del contrato de once de Febrero de 1902, que adquirió por traspaso la misma Compañía y que ahora se rescinde.

México, Octubre veintiuno de mil novecientos tres.—Leandro Fernández.—rúbrica.—H. T. Edgar.—rúbrica.—

Es copia, México, Octubre 21 de 1903.—Gilberto Montiel.—Subsecretario.

[Translation.]

(A seal reading: Department of Communications and Public Works. Mexico. Second Section. Stamps to the value of $15, duly canceled.)

Contract concluded in accordance with the law on railroads under date of April 29, 1889, between Leandro Fernandez, Secretary of Communications and Public Works, representing the National Executive, and Mr. Harry T. Edgar, representing the Traction Company of El Paso and Juárez (El Paso and Juárez Traction Company), for the operation of the international bridges and urban tramways of that city, of which said Company is owner.

ART. 1. The city street car lines established in Juárez City by virtue of the concessions granted by the Government of the State of Chihuahua under date of July 23, 1882, and December 16, 1887, both revised on November 8, 1888, and acquired by transfer by the El Paso and Juárez Traction Co., as well as the international bridges with their railroad, established over the Río Grande in the said Juárez City, by virtue of the concessions granted by the Federal Government under dates of January 24, 1882, and May 1, 1888, which the said Company also acquired by transfer, shall be governed by and solely subject to the stipulations contained in the following articles:

ART. 2. The El Paso and Juárez Traction Company is authorized, on its own account or on that of such company as it may organize for the purpose, to continue to operate, for a period of eighty-five years, in accordance with the provisions of the law of railroads dated April 29, 1899, the city railroad lines established in Juárez City and two international bridges over the Río Grand

in that city, of which the said Company is now possessor and to which the foregoing article refers.

ART. 3. The Company is obligated to substitute within ten years a metallic structure in place of the wooden one now existing as the international bridge over the Río Grande at the extension of Lerdo Avenue, which bridge was recently reconstructed.

ART. 4. The service of the urban railways and of those established over the bridges shall be by electric traction.

ART. 5. The Company shall contribute, at once and throughout the period of the concession, the monthly sum of $50 toward the fund for railroad inspection.

ART. 6. The Company shall have its principal domicile at Juárez City, Chihuahua.

ART. 7. The Company may import, free of every kind of import or customs duties, or of federal or local taxes, to an amount limited by the Department of Communications, for the construction and equipment, at one single time, of the railroad and the telephone or telegraph line and its accessory, the articles referred to in Art. 74 of the law on railroads.

ART. 8. The Company shall collect, for the transportation of each passenger, ten cents, and for the freight service it shall submit in due time to the Department of Communications the respective schedules, which, when approved, shall not be altered without the permission of the said Department.

ART. 9. The Company is authorized to collect a toll for the passage of pedestrians and vehicles over the bridge, and in case it makes use of this right, it must submit to the approval of the Department of Communications, within due time, the rates to be collected for this service, which shall not be altered without the permission of the Department.

ART. 10. In accordance with the provision of Art. 29 of the law on railroads, there shall not be concluded, during the period of ten years, any other contract for the construction of other bridges intended for urban railroads within a zone of two hundred meters to either side of the two bridges to which this Contract relates.

ART. 11. The Contract of February 11, 1902, by which the establishment of the railroad in Juárez City and an international bridge over the Río Grande was authorized is hereby annuled, said Contract having been acquired by the Company by virtue of a transfer approved by the Department of Communications and Public Works.

ART. 12. Inspectors and federal officers on duty, as well as all kinds of property of the Federal Government, shall pass free of charge over the bridges and railroads, upon an order being given by the proper authority.

ART. 13. In accordance with the provisions of fraction II of Art. 18 of the aforementioned law on railroads, the rights of the Federation shall be the first and shall be preferable to those which the Government of the State of Chihuahua may reserve in the contracts concluded by the Company in regard to the urban railroads in question.

ART. 14. In order to guarantee the fulfilment of the obligations contracted by the Company under the present Contract, the deposit of $3,000 in bonds of the Consolidated Public Debt which is made in the General Treasury of the Federation in accordance with Art. 16 of the Contract of February 11, 1902, acquired by transfer by the same Company and now recinded, shall continue.

Mexico, October 21, 1903.

LEANDRO FERNANDEZ. (Rúbric)
H. T. EDGAR (Rúbric).

A copy. Mexico, October 21, 1903.

GILBERTO MONTIEL,
Assistant Secretary.

AFFIDAVITS SHOWING OPEN AND UNOPPOSED EXERCISE OF JURISDICTION OF EVERY KIND OVER THE CHAMIZAL TRACT BY THE OFFICERS OF THE UNITED STATES, THE STATE OF TEXAS, AND THE COUNTY AND CITY OF EL PASO, TEXAS.

AFFIDAVIT OF WILLIAM MICHIE COLDWELL.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared William Michie Coldwell, who being by me first duly sworn, on oath deposes and says:

My name is William Michie Coldwell; I am 55 years of age, a lawyer by profession; I am now City Attorney of the City of El Paso for the fourth time; I have been an alderman of the City and also its Recorder or Judge of its Corporation Court. In 1876, 1877, and 1878 I was in the Customs Service of the United States as a Mounted Inspector, stationed during the first two years at El Paso. I first came to El Paso on the 23rd day of December, 1873, and have resided here ever since with the exception of about a year, 1878, spent in Silver City, New Mexico.

From 1873 to 1877 my father, Colbert Coldwell, was Collector of Customs of this Customs district, with headquarters here at El Paso. He had spent much of his youth in Northern Mexico, and knew Spanish well.

From my first arrival in the country down to about 20 years ago, the authorities of the United States and of the State of Texas exercised undisputed and practically unquestioned jurisdiction over what is known as the Chamizal tract, which I never heard called by that name until after the origin of the present controversy between the two countries, about 1895. The Mexican authorities made no attempt whatever to exercise authority over that tract. As an officer in the United States Revenue Service during the years mentioned, to-wit: 1876 and 1877, I was on that tract nearly every day in the discharge of my duties, and I never for one moment even suspected that any Mexican officer would think that I was intruding on Mexican territory.

The City authorities from my earliest arrival in the country, continuously during all the time that there was a City organization asserted and actually exercised full municipal authority and jurisdiction over the entire Chamizal tract in the limit defined by statute. As Judge of the Corporation Court, then called Recorder of the City of El Paso, prior to 1894 I repeatedly tried, convicted or acquitted persons accused of violations of the ordinances of the City of El Paso, or the minor penal laws of the State of Texas, which violations were charged to have been committed on the Chamizal tract. The accused were very frequently Mexican citizens and they never claimed and never asserted that the territory in question was in Mexico, and hence that my court had no jurisdiction.

In 1874 or 1875 I was present at an interview between my father and Mr. Jesus Escobar y Armendariz, then Mexican Collector of Customs at Paso del Norte now Ciudad Juarez, which meeting took place at my father's office on this side of the river.

Mr. Escobar asked my father for permission to station a Mexican Custom House officer on the road leading from El Paso to Juarez about 200 or 300 yards north of the river. My father replied in substance that he had no authority to grant any such permission, and even if he had and granted the permission it would not be safe for a Mexican Customs officer to attempt to exercise any authority on this side of the river. Mr. Armendariz withdrew and there the matter ended. No Mexican officer, Customs or other,

was there stationed at that time or any other. No Mexican officer has ever exercised or attempted to exercise any authority whatsoever within the territory now included in the statutory limits of the City of El Paso during all the time that I have resided in El Paso. If he did so it was covertly and over some ignorant person of his own nationality. Until embarrassed, and that greatly so, by recommendations, which under the circumstances amounted to orders, the jurisdiction of the City authorities and of the State authorities over the territory in question, has been absolute and as unquestioned by the persons over whom exercised, as it has been over any other portion of the City. I do not consider the events connected with Mr. Garfias' wing dam, etc., in 1887 or 1888 as making any exception to this jurisdiction.

In 1881 Juan S. Hart, engineer, made a map of the City of El Paso, and if my memory serves me correctly it was adopted by the City Council as the official map of the City. When first made, I was quite familiar with that map, and I believe I was City Attorney when it was adopted as the official map; however, the municipal records will show that. The photograph copy of a map, on which I have written this date (March 28, 1911) and my name, is, in my opinion, a correct copy of that original official map.

When the interview between my father and Mr. Escobar above spoken of, took place, the conversation was carried on mainly in Spanish though some of it was in English, which language Mr. Escobar spoke well. At that time I understood very little Spanish and am now testifying as to the substance of that conversation. I may blend together both that which I myself heard and understood and that which my father stated to me immediately after the interview.

WILLIAM MICHIE COLDWELL.

Sworn to and subscribed before me this the 29th day of March, A. D. 1911.

R. C. WALSHE,

[SEAL.] *Notary Public in and for El Paso County, Texas.*

AFFIDAVIT OF ADOLPH KRAKAUER.

THE STATE OF TEXAS,

County of El Paso.

Before me, the undersigned authority, on this day personally appeared Adolph Krakauer, who being by me first duly sworn, on oath deposes and says:

My name is Adolph Krakauer; I have resided in El Paso, Texas, since 1875; when I came here in 1875 from San Antonio, Texas, I was employed as book-keeper of the firm of S. Schutz & Brother, and in my capacity as such had frequent intercourse with the United States, as well as the Mexican, Custom House officials by virtue of importation and exportation of merchandise. To my personal knowledge the authorities of the United States exercised jurisdiction to the north bank of the Rio Grande river during all of said period, and the Mexican authorities exercised no jurisdiction nor to my knowledge asserted any right to jurisdiction anywhere north of the river.

I was in the employ of Messrs. Schutz & Brother until 1879 when this firm sold out their business to Ketelsen & Degatau, with whom I continued as Manager of the business until 1885. My personal knowledge of the dealings of said firm, in regard to the importation and exportation of merchandise, continued during all of that period, and the exercise of jurisdiction by the United States Customs authorities on the north bank of the river was complete and exclusive. Since 1885 I have been at the head of the business of Krakauer, Zork & Moye, which firm has been largely engaged in the importation and exportation of merchandise, and the same conditions that I have described continue up to the present time.

I was elected a member of the City Council of the City of El Paso in July 1880 and served altogether three or four terms as alderman, having been elected at different times to that office. During all of the time of my service as, a member of the City Council the City government of the City of El Paso exercised complete and exclusive jurisdiction of municipal affairs over all the territory embraced within the statutory limits of the City of El Paso, including all the land to the north bank of the Rio Grande river in said city, and no other governmental jurisdiction or authority was ever exercised over any portion of said territory except that of the government of the United States of America, of the State of Texas, and of the City and County of El Paso.

ADOLPH KRAKAUER.

Sworn to and subscribed before me this the 29th day of March, A. D. 1911.

[SEAL.] R. C. WALSHE,

Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF J. C. FORD.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared J. C. Ford, who being by me first duly sworn, on oath deposes and says:

My name is J. C. Ford. I live in the City of El Paso, Texas, and my home has been in El Paso County since 1876 with the exception of two years about 1889 and 1890.

In the spring of 1878 I was a member of the State Ranger force of the State of Texas, and to my knowledge the said Ranger force and the civil and military authorities generally on both sides of the river treated the Rio Grande river, as it flowed between El Paso and Jaurez as the boundary line between the United States and Mexico, and between the States of Chihuahua and Texas and between El Paso and Jaurez, and the authorities of those governments were exercised to the center of the Rio Grande, respectively.

I remember the fact that the Rio Grande river became dry for a time in the year 1879, which was the first time I had ever known it to become entirely dry.

Ever since I came here in 1876 the authorities of the United States of America and of the State of Texas and of the City and County of El Paso have exercised sole and undisputed jurisdiction over all the territory within the limits of the City of El Paso and north of the Rio Grande, and no officer or representative of the Mexican government has ever to my knowledge exercised or asserted any jurisdiction or authority over any portion of that territory.

J C FORD

Sworn to and subscribed before me, this the 29th day of March, A. D. 1911.

[SEAL.] U. S. GOEN
Notary Public in and for El Paso County, Texas

AFFIDAVIT OF R. C. LIGHTBODY.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared R. C. Lightbody, who being by me first duly sworn, on oath deposes and says:

My name is R. C. Lightbody. I first came to El Paso, Texas, in February 1881, and have continued to reside in the City of El

Paso, Texas, ever since said date, during the whole of which period I have been engaged in merchandising.

When I first came to El Paso in February 1881 I found the United States Customs authorities and the peace officers of the United States of America and the State of Texas and of the City and County of El Paso exercising their authority and jurisdiction to the center of the Rio Grande river, where the same forms a dividing line between the cities of El Paso, Texas, and Juarez, Chihuahua, and that same practice and condition has continued uninterruptedly up to the present time.

From 1885 to 1889 I was Mayor of the city of El Paso and at that time the Corporation Court of the city was presided over by the Mayor, same being known as "Mayor's Court." In my official capacity as chief executive officer of the City and also in my capacity as Judge of the City Court I exercised the undisputed power and authority of my office to the center of the Rio Grande river, as the same then ran, which is approximately the same course and position which the Rio Grande now maintains between Juarez and El Paso.

No attempt to question the exercise of my jurisdiction or authority as such was ever made by any representative of the Mexican government, Federal, State or Municipal.

I particularly call to mind that in the discharge of the duties of Judge of the Corporation Court, questions would arise concerning the National boundary line, and therefore the boundary of the City, and on one occasion, which I call particularly to mind, the issue was finely drawn as to whether a fight, which had occurred on one of the bridges leading from El Paso into Juarez, had occurred on the American or Mexican side of the boundary line, and the determination of the case involved the ascertainment of the boundary, which was held by the court to be the mid-channel of the river at low water.

To my knowledge no National authority or jurisdiction has ever been exercised over any portion of the Chamizal tract since my arrival in El Paso, except that of the government of the United States of America, of the State of Texas, and of the City and County of El Paso, Texas.

R. C. LIGHTBODY

Sworn to and subscribed before me, this the 30th day of March, A. D. 1911.

[SEAL.] R. C. WALSHE

Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF W. H. AUSTIN.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared W. H. Austin, who being by me first duly sworn, on oath deposes and says:

My name is W. H. Austin; I first came to El Paso March 21st, 1881 and have resided in this city ever since that time, although temporarily absent for short periods.

Shortly after I came here I participated in the organization of the State National Bank, and was cashier of that bank for five years; I was engaged in the banking business in the City of El Paso up to 1898. I was City Treasurer of the City of El Paso in 1886 and 1887 and in the spring of 1893 was elected Mayor of the City. I am now engaged in the real estate business.

When I came to El Paso in 1881 there was no bridge across the Rio Grande between El Paso and Juarez, and when the river was full of water communication was by means of ferries, and when the water was low we crossed by fording the river.

When I came here I found that the United States Custom House officials were patroling the north bank of the river and collecting Customs at that point, and the same course has been pursued by the United States Customs officials up to the present time without interruption; and to my knowledge no governmental authority or jurisdiction has ever been exercised within that portion of the City of El Paso, which is known as the Chamizal tract, except that of the representatives of the government of the United States, of the State of Texas and of the City and County of El Paso, Texas.

When I was Mayor of the City of El Paso as aforesaid, I exercised the authority and jurisdiction of that office over all the territory included within the statutory limits of the City of El Paso, including the north bank of the Rio Grande river, and that authority was never officially questioned or contradicted by the Mexican authorities.

W. H. AUSTIN.

Sworn to and subscribed before me, this the 29th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE.
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF W. J. FEWEL.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared W. J. Fewel, who being first by me duly sworn, deposes on oath, and says:

My name is W. J. Fewel; I first came to El Paso in May 1881 and have made my residence at the City of El Paso, Texas, ever since that date. At the time I came to El Paso in May 1881 there was no bridge across the Rio Grande between El Paso and Juarez but the river as it flows between the two cities was then located practically where it is now. The means of crossing the river in periods of high water was by a ferry boat, and in periods of low water the river was crossed by fording it.

At the time I arrived here the Custom House officials of the United States of America were exercising authority to the north bank of the Rio Grande, examining and detaining at that point persons entering the United States from Mexico, and the same practice has obtained ever since and without interruption up to the present time; in the same way the Mexican Custom House authorities were exercising jurisdiction to the south bank of the river, but to my knowledge no attempt was ever made by the Mexican Custom House authorities to collect Customs or make inspections on the north bank of the river.

I am well acquainted with the tract of land, which is designated the Chamizal tract, although I never heard it designated by such a name until about the time this case was brought before the International Boundary Commission.

During the whole period since I removed to El Paso, Texas, in 1881, the peace officers and other authorities of the United States and of the State of Texas, and of the City and County of El Paso have exercised sole and exclusive jurisdiction over the so called Chamizal tract, and no other National, State or Municipal authority has been exercised over said tract to my knowledge within that time.

W. J. FEWEL.

Sworn to and subscribed before me this the 30th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE.
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF W. G. WALZ.

THE STATE OF TEXAS,

County of El Paso.

Before me, the undersigned authority, on this day personally appeared W. G. Walz, who being by me first duly sworn, on oath deposes and says:

My name is W. G. Walz; I came to El Paso the latter part of June, 1881, and have resided here ever since. My father-in-law, Abner Tibbetts, was Collector of Customs of the El Paso District and I had the position as Chief Clerk for about three or four months then was appointed as Special Deputy Collector of the District. As Special Deputy Collector I had charge of this district, in the sense of doing the work.

From Washington Park to Fort Bliss we guarded the fords on the road across the river, ferry boats running at that time when the water was high, and our inspectors had charge of the river on the banks, which were about as they are now; I can see very little change since that time.

When I was acting in the capacity of Special Deputy Collector of this Customs district the orders and instructions of the Collector's office to the inspectors were to guard the north bank of the river and to exercise their authority along the whole course of the river bank between Washington Park and old Fort Bliss, and I know that such authority was habitually exercised.

Ever since I removed to El Paso in 1881, the Custom House authorities and the peace officers of the United States, as well as the representatives of the State of Texas and of the City and County of El Paso have habitually exercised sole and exclusive jurisdiction over all that portion of the City of El Paso, which is described in this proceeding as El Chamizal. I will state that there was to my knowledge and belief no use of the term El Chamizal, as applied to any portion of the territory of the City of El Paso, prior to the time this case was first presented to the International (Water) Boundary Commission at El Paso about 1894.

Since 1882 I have been engaged in merchandising at El Paso, Texas, importing goods from Mexico and exporting goods to Mexico, and during all of that time the authority of the United States Custom House officials has been uniformly exercised over all that territory lying to the north of the Rio Grande, and the Mexican officials have exercised authority on the south side only of the Rio Grande.

W. G. WALZ

Sworn to and subscribed before me, this the 29th day of March A. D., 1911.

[SEAL.] R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF J. W. EUBANK.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared J. W. Eubank, who being by me first duly sworn, on his oath deposes and says:

My name is J. W. Eubank; I reside in the City of El Paso, Texas. I came here first on a visit in the year 1881, in October of that year. At that time there was no bridge completed across the Rio Grande river, and on the occasion of my first visit here I crossed the Rio Grande in a ferry boat. I returned to El Paso the next year in August, 1882, and took up my residence in this County at that time, spending a portion of my time in this city and a portion of my time at Ysleta. At that time the Stanton Street car bridge across the Rio Grande was completed and I repeatedly crossed the same into Mexico. Whenever I crossed the said bridge into Mexico I found the Customs authorities of the United States in control at the north or United States end of the bridge, and the Mexican Customs authorities in control of the south end of the bridge.

I continued to reside here until 1891, then went away and came back here to live in 1900. During all the time of my residence in this County I have been engaged in the surveying business, and have had occasion to be familiar and am familiar with the land and territory on which the City of El Paso, Texas, is built. I occupied the position of County Surveyor from 1886 to 1888, and from 1904 up to the present time, and I was a deputy county surveyor between 1882 and 1886. I have examined the map of the territory known as El Chamizal, Case No. 4, which appears at page 97 of Volume I of the proceedings of the International (Water) Boundary Commission, United States and Mexico Treaties of 1884 and 1889, and I am familiar with the land designated on said map as El Chamizal. During the whole of my acquaintance with and knowledge of said territory, from the time I came here in 1881 up to the present time, no other governmental authority or jurisdiction has ever been exercised over any portion of said territory

except that of the government of the United States of America, and of the State of Texas, and of the City and County of El Paso, Texas.

J. W. EUBANK

Sworn to and subscribed before me, this the 30th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF W. W. BRIDGERS.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared W. W. Bridgers, who being by me first duly sworn, on oath deposes and says:

My name is W. W. Bridgers; I came to the City of El Paso, Texas, in November 1881, and have resided in said city ever since said date. During that time I have held several official positions. I was elected Justice of the Peace in 1897 and occupied that position until 1899, at which time I was elected to the Legislature of the State of Texas, and was re-elected in 1901 and 1903; I retired from the Legislature in 1905. Since that time I have been assistant County Attorney, Assistant District Attorney and Assistant City Attorney, and am at present holding the position of County Attorney to which I was elected in 1908 and was re-elected in 1910;

I have examined the map of the tract known as El Chamizal, Case No. 4, which appears at page 97 of Volume I of the proceedings of the International (Water) Boundary Commission, United States and Mexico Treaties of 1884 and 1889, and I am familiar with the land shown on said map and designated as El Chamizal, and have been familiar with said tract of land since shortly after my arrival in this city in 1881. During all that period to my knowledge the Customs authorities of the United States of America have exercised jurisdiction over all of said tract of land and to the north bank of the Rio Grande, detaining, examining and inspecting persons entering said tract at the north bank of the Rio Grande, and collecting Customs at the north bank of said river.

To my personal knowledge, during all of said period, the peace officers of the United States of America and of the State of Texas and of the City and County of El Paso, Texas, have uniformly and invariably exercised jurisdiction over said territory and have

executed the laws of the United States and of the State of Texas and of said City over said territory, and to my knowledge no other governmental authority or jurisdiction has ever been exercised over said territory within said period.

In my capacity as a prosecuting officer of said County and City I have often represented the government and prosecuted cases where the offense was alleged and was proved to have occurred within the said territory, which has been designated as El Chamizal.

W. W. BRIDGERS

Sworn to and subscribed before me on this the 30th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF J. H. COMSTOCK.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared J. H. Comstock, who being by me first duly sworn, on oath deposes and says:

My name is J. H. Comstock; I reside at El Paso, Texas, and have resided here since the month of November 1881. In 1882 I became a police officer of the City of El Paso, Texas, and occupied that position for about one year when I was appointed and entered on the duties of Deputy Sheriff of El Paso County, Texas, Captain James H. White then being Sheriff of said County. I occupied the position of Deputy Sheriff at that time for about seven years, and after that engaged in private business for about eight years. In 1898 I again became Deputy Sheriff, James H. Boone being Sheriff of the County.

I am personally well acquainted with the tract of land, known as El Chamizal, being a portion of the present City of El Paso, Texas, and have been acquainted with said land since I first came here in 1881, though I never heard it designated by any such name until about the time this proceeding was instituted before the Boundary Commission about 1894.

As a police officer of the City of El Paso in 1882 I executed the laws of the said City over the territory now designated as El Chamizal, as a portion of the City of El Paso, and thereafter during the seven years that I was Deputy Sheriff under Captain James H. White and again as Deputy Sheriff under James H. Boone executed

and enforced the laws of the State of Texas over all that territory known as the Chamizal.

In the exercise of the duties of such offices I had frequent occasion to exercise, and did exercise, the authority to execute civil process, as well as criminal warrants, over said territory, and when Captain James H. White was Sheriff, as above stated, the offices of County Sheriff and Tax Collector were united; the State and County taxes were collected over said territory by the officers, and for property in said territory in the same way as in any other portion of El Paso County.

In the discharge of the duties of said offices it was frequently necessary to make delivery of prisoners to the Mexican authorities and to receive from the Mexican authorities prisoners remanded to the justice of this country, and such exchange and delivery of prisoners was uniformly and invariably made at the middle of the bridges over the Rio Grande between El Paso and Juarez.

To my knowledge no jurisdiction has ever been exercised, nor has any attempt been made to exercise jurisdiction on the part of any officers or representatives of Mexico, over any portion of the territory now designated as El Chamizal.

J. H. COMSTOCK.

Sworn to and subscribed before me, on this the 29th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF CHARLES M. NEWMAN.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared Charles M. Newman, who being by me first duly sworn, on oath deposes and says:

My name is Charles M. Newman. I first came to El Paso in May 1882 and have resided in this city continuously since that time. I am personally well acquainted and familiar with the tract of land shown on the map on page 97 of Volume I of the proceedings of the International (Water) Boundary Commission, United States and Mexico Treaties of 1884 and 1889, and known as El Chamizal, Case No. 4. I have been acquainted and familiar with the territory embraced in El Chamizal since very shortly after my arrival at El Paso in 1882. In the year 1894, in the early part of that year, I was employed by the El Paso Street Railway

Company and assigned to duty at the Stanton and Santa Fé Street bridges, which cross the Rio Grande river, at the southerly ends of Santa Fé and Stanton Streets. I was on duty at the United States ends of either bridge from 6 o'clock in the forenoon until 10 o'clock at night, and it was my duty to collect tolls from those crossing the bridges and street car fare from those passing over the bridges on the street cars, and in the discharge of my said duties I occupied a small guard-house or shelter at the American ends of the bridges, which were used by the Customs guards or representatives of the Collector of Customs of the United States of America at those points.

While so stationed at the bridges aforesaid I have repeatedly seen the exchange in bond of imported goods, especially liquors, going from the United States into Mexico; this exchange was habitually and invariably made at the center of the said bridges, said bonded liquors being at that point, that is the center of the bridge, delivered by the United States Customs officers to the Mexican Customs officers, the formal receipt and exchange, and all receipts of paper being uniformly and invariably made at that point.

I was also a witness repeatedly to the formal delivery of prisoners being delivered by the United States authorities to the Mexican authorities, and of delivery of prisoners by the Mexican authorities to the United States authorities when being rendered from the justice of one nation to the other, and such exchange of prisoners was uniformly and invariably made at the center of the bridges.

I am personally cognizant of the fact that during all of the time of my service at said bridges, which continued up to the spring of the year of 1897, that during all of said period the representatives of the United States Custom House uniformly exercised there the sole and exclusive authority at the United States ends of the bridges to inspect persons crossing the river to the United States side for the ascertainment of the facts whether they carried dutiable articles, and that they uniformly collected Customs at these points, and whenever it was necessary to deliver papers at the port of departure for goods which were to subsequently re-enter the United States, such delivery was uniformly made at the north ends of the bridges.

I will further state on oath that during my service for the Street Car Company at the north ends of the bridges aforesaid, I was a special policeman of the City of El Paso, duly appointed by and

qualified under the authorities of said City, and uniformly exercised my authority as such special policeman to the center line of said bridges; that I have repeatedly made arrests at the north ends of said bridges and on the north ends of said bridges, and have seen the same authority uniformly and exclusively exercised at and on the United States or north ends of said bridges by the legal representatives of the United States, and of the State of Texas, and of the City and County of El Paso.

I further state on oath, that prior to the time of my appointment and service in the capacity aforesaid, being a resident of the City of El Paso, I frequently crossed said bridges, leading from the City of El Paso into the City of Juarez prior to the time of such appointment, and that from my personal observation and knowledge, the same course of conduct in regard to making arrests, collecting Customs, delivering prisoners, bonded goods, etc. was followed prior to the time of my said appointment, and has been followed since the date of my retirement from such position.

To my knowledge, no other governmental authority or jurisdiction has ever been exercised over the tract, known as El Chamizal, since the time I began my residence in the City of El Paso, save and except the authority of the representatives of the government of the United States, of the State of Texas, and of the City and County of El Paso.

C. M. NEWMAN

Sworn to and subscribed before me, this the 29th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF J. J. LONGWELL.

THE STATE OF TEXAS,
County of El Paso.

Before me, the undersigned authority, on this day personally appeared J. J. Longwell, who being by me first duly sworn, on oath deposes and says:

My name is J. J. Longwell; I reside in the City of El Paso, Texas, and have lived in this city since 1884; I visited the City of El Paso, however, prior to that time, coming here the first time in the year 1878, and going from here to Chihuahua, Mexico, from which place after a brief visit, I came back to El Paso, and thence into the interior of the United States.

When I left El Paso to go to Chihuahua, Mexico, as aforesaid, I crossed the Rio Grande between El Paso and Juarez crossing in

a vehicle at the ford. At that time the Customs authorities of the United States were in control of the north bank of the Rio Grande and the Mexican Customs Officials were in control of the south bank of the river.

After the trip, which I have above described, I did not return to El Paso until about 1884, when I returned here and took up my residence. When I first returned to El Paso in 1884 I had a brick yard for the making of brick, and about one year after my arrival I engaged in the transfer business. I have been in the transfer business continuously ever since that time about 1885, and in that business from the time I entered the same until this time I have had occasion to continually pass backwards and forwards across the river in the management and conduct of my business where the said river runs between the cities of El Paso, Texas and Juarez, Mexico. During all that time I have repeatedly and continuously made delivery of bonded goods and other goods, going from the United States into Mexico, or coming from Mexico into the United States, and during all that period the delivery by the Customs authorities of one country to the other has been uniformly and invariably made at the bridges across the Rio Grande, and papers have been exchanged at the bridges. Whenever in the delivery of goods they have been delivered from the United States into Mexico, to be delivered out of bond, the bond has been uniformly and invariably cancelled at the bridges, and in such cases the transfer of the goods from one vehicle or wagon to another has uniformly been made at the center of the bridges across the Rio Grande.

I have examined the map, purporting to show the tract known as El Chamizal, Case No. 4, on page 97 of the proceedings of the International (Water) Boundary Commission, United States and Mexico Treaties of 1884 and 1889, Volume 1, and am familiar with the land so described on said map, and to my knowledge during the whole time of my residence at the City of El Paso no other governmental authority or jurisdiction has ever been exercised over said tract of land except that of the government of the United States of America, of the State of Texas and of the City and County of El Paso, Texas.

J J LONGWELL

Sworn to and subscribed before me on this 30th day of March A. D., 1911.

[SEAL.] G. C. WINES

Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF FRANK B. SIMMONS.

THE STATE OF TEXAS,

County of El Paso.

Before me, the undersigned authority, on this day personally appeared Frank B. Simmons, who being by me first duly sworn, on oath deposes and says:

My name is Frank B. Simmons; I came to the City of El Paso, Texas, in 1885 and have resided in this city ever since said date. In the beginning of January, 1886 I was appointed Deputy Sheriff of El Paso County, and occupied the position of Deputy Sheriff until 1892, at which time I was elected to the office of Sheriff of El Paso County; I was several times re-elected and continued to hold the office of Sheriff of said County until the year 1898.

I am familiar with the tract of land and territory known as El Chamizal and have examined the map thereof, appearing at page 97 of Volume I of the proceedings of the International (Water) Boundary Commission, United States and Mexico Treaties of 1884 and 1889. During all the years of my service as Deputy Sheriff of El Paso County from the beginning of 1886 up to 1898 I uniformly and without interruption exercised jurisdiction and authority as such officer over all of said tract of land or territory known as El Chamizal, said jurisdiction at all times extending to and being exercised to the center of the Rio Grande River and to the center of the bridges crossing the same. As such Deputy Sheriff and Sheriff it was my duty on many occasions to make delivery of prisoners being remanded by the authorities of the United States to the custody of the Mexican authorities, and to receive from the Mexican authorities prisoners delivered into the jurisdiction of the authorities of the United States and of the State of Texas. During all of that time it was the invariable custom to make delivery of such prisoners at the center of the bridges crossing the Rio Grande between the cities of El Paso, Texas, and Juarez, Chihuahua; and to my knowledge no governmental authority or jurisdiction other than that of the United States of America and of the State of Texas and of the City and County of El Paso, Texas has ever been exercised over any of said territory above referred to as El Chamizal, during any part of the time since I came here in the winter of 1885.

I further state under oath, that in my capacity as peace officer I had occasion many times to co-operate with the authorities of the United States government in the arrest of Chinese persons

charged with unlawfully entering the United States and for that purpose guard was kept and arrests made of such Chinese persons at the north bank of the Rio Grande.

FRANK B SIMMONS

Sworn to and subscribed before me this the 29th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,

Notary Public in and for El Paso County, Texas.

AFFIDAVIT OF PEYTON J. EDWARDS.

THE STATE OF TEXAS,

County of El Paso.

Before me, the undersigned authority, on this day personally appeared Peyton J. Edwards, who being by me first duly sworn, on oath deposes and says:

My name is Peyton J. Edwards; I am 42 years of age; I came to El Paso in May, 1886, and have made it my home ever since; I have lived here all the years during that time.

I am Sheriff of El Paso County and have been since November 1910. During my residence I have held different official positions at El Paso. I was appointed night inspector of Customs in February, 1894 and was stationed at the Stanton Street Bridge in El Paso, and kept such position until the latter part of May 1894 when I was promoted to Mounted Inspector of Customs, which position I held until about the middle of July 1896. I was Chief of Police of the City of El Paso, Texas, for a period of about six weeks in March and April 1903. I was County Attorney of the County of El Paso, Texas, for about 18 months during the years 1898 and 1899, being elected in November 1898.

During all of these 25 years of my residence I have been familiar with that portion of the City of El Paso, which in this proceeding has been designated as El Chamizal, and to my knowledge no governmental authority or jurisdiction has at any time within that period been exercised over said territory except that of the United States of America, the State of Texas, and of the City and County of El Paso, Texas. In my several official capacities as Mounted Inspector, Chief of Police of the City of El Paso, County Attorney of the County of El Paso, and Sheriff of El Paso County, and on other occasions when serving by special appointment as a peace officer, I have exercised the authority and jurisdiction of said respective offices over the aforesaid Chamizal tract.

When I came here in May of 1886 I was employed by the El Paso Street Railway Company, first in the offices and then as conductor, which railway ran over the Stanton Street bridge across the Rio Grande river into the City of Juarez, Mexico, and the river now is at practically the same bed as it was at that time. I made daily trips during the time I was employed by the El Paso Street Railway Company in 1886 to Juarez, and knew the Mayor of Juarez, at that time Mr. Provencio, and the Chief of Police well, and other officials, and never knew them try to exercise any jurisdiction of the ground I knew the United States Customs officers and the officers of the City and County of El Paso, and during that time the said Customs officers and the City and County officers exercised jurisdiction over this ground to my personal observation, and the Mexican officers did not, and during all of the time of my residence in the City of El Paso of 25 years the United States officials and the officials of the State of Texas and the City and County of El Paso and the precinct officers have exercised exclusive jurisdiction over this tract of land, over El Chamizal. I have never known of the exercise of any jurisdiction or attempted exercise of jurisdiction of the Mexican officials over the strip of land in controversy during this period of time; and I am at present exercising jurisdiction over this strip of land and know that the officers of the United States, soldiers; and officers of the State of Texas, and of the County and City of El Paso are exercising jurisdiction over this same tract of land and the Mexican authorities are not.

PEYTON J EDWARDS

Sworn to and subscribed before me this the 30th day of March, A. D., 1911.

[SEAL.] R. C. WALSHE,

Notary Public in and for El Paso County, Texas.

MISCELLANEOUS CORRESPONDENCE.

[Opinion of Attorney General Cushing Oct. 29, 1855.[a]]

Construction of the Mesilla Treaty.

By the terms of the Mesilla Treaty, seven millions of dollars were to be paid to the Mexican Republic on the exchange of ratifications, and three millions were to become due when the new boundary line should be surveyed, marked, and established.

[a] [See Official Opinions of the Attorneys General of the U. S., Vol. VII, pages 582 to 594; Senate Ex. Doc. No. 57, 34th Congress, 1st session, pages 21 to 29.—Agent's note.]

The "establishment" of the line consists of the official agreement of two Commissioners, appointed one by each government, to survey, mark, and establish the line; and that agreement, when duly made, is conclusive against both governments.

According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American Republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government.

The United States observe, as their rule of public law, to recognise governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.

Hence, in this case, the Mexican Commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement, signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican Republic.

To establish the line, it is not requisite that the maps contemplated by the treaty shall first have been made: that is not the establishment of the line, but only the record or history of its survey.

ATTORNEY GENERAL'S OFFICE,
October 29, 1855.

SIR:

Your communication of the 25th instant calls for my opinion as to the time at which the balance of three millions of dollars, stipulated by the United States, in the treaty of December 30th, 1853, to be paid to the Mexican Republic, will be come demandable or due.

The premises of the question are few and simple.

The first article of the treaty provides for a cession of territory from the Mexican Republic to the United States, involving a modification of the line previously prescribed by the treaty of Guadalupe Hidalgo.

To ascertain, geographically, the line of the treaty, the article requires that each government shall appoint a commissioner, to the end that, by common consent, the two commissioners shall meet at Paso del Norte at a certain time, and proceed "to survey and mark out upon the land" the line of the new treaty, where it shall not have been already established under the previous treaty,

"keeping a journal and making proper plans of their operations". The contracting parties, if they see fit, may each adjoin to its commissioner, "scientific or other assistants, such as astronomers and surveyors;" but the concurrence of the latter "shall not be considered necessary for the settlement and ratification" of the line. "That line," continues the treaty, "shall be alone established upon which the commissioners may fix, their consent, in this particular, being considered decisive, and an integral part of the treaty, without necessity of ulterior ratification and approval, and without room for interpretation of any kind by either of the parties contracting." And it is further agreed that "the dividing line thus established shall, in all time, be faithfully respected by the two governments, without any variation therein," save by constitutional consent of each Republic.

The third article is in the following words:

"In consideration of the foregoing stipulations, the Government of the United States agree to pay to the Government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established."

So that, seven millions having already been paid by the United States, the remaining three are to be paid as soon as the boundary line "shall be surveyed, marked, and established," that is to say, surveyed, marked, and established in the manner defined by the first article.

There can be no doubt as to the force of the words "surveyed" and "marked," which describe mechanical or physical acts. But what is the force of the word "established?"

We must not ascribe to "establish," *here*, any meaning different from "fix." In fact, the Spanish word "fije" (fix) is used in the third article, where the English is "established," while thrice in the first article, where the same English word is employed, it is "establecido" in the Spanish.

In all these instances, the true force of both "fix" and "establish" is plainly determined by the language of the essential phrase of the first article, to the effect that "the line shall be alone established upon which the commissioners may "fix," as it stands in the English. Thus it appears that "fix" means something different from "establish;" for here "establishment" is treated as the *result* or sequence of "fixation." What then is the act, which the term "fix" in the English denotes? That is rendered indubitable

by the Spanish, which says, not,—"that line shall be alone established upon which the commissioners may fix,"—but,—"for said line shall only be established by what the commissioners agree,"—"pues dicha linea solo sera establecida por lo que convengan los comisarios." The said line is to be *established;* that is the final fact; and it is to be established *only* in one way, by *the* AGREEMENT *of the commissioners.*

Have two duly appointed commissioners surveyed, marked, and agreed upon a line? If they have, or when they shall have, done this, then is the time when the remaining three millions are due to the Mexican Republic.

As the employment of scientific assistants by the commissioners is permissive, not obligatory, nothing which they might or can do is necessary to the fixation of the true line. That stands on the single determinative and causal fact of the agreement of the commissioners, who are the only judges of the sufficiency and completeness of actual survey and marking, astronomical observations and calculations, plans, maps, or other incidents of determination, and who, thereupon, judge and agree under their official responsibility to the respective Republics.

Such are the views, which occur to me, regarding the construction of the treaty in this respect. It remains to apply the treaty to the facts.

The two governments each appointed its commissioner, the United States Major William H. Emory, and the Mexican Republic D. José Salazar y Larregui.

The appointment of the latter was duly notified to the United States by the Mexican government, through its minister in Washington. (Mr. Almonte to Mr. Marcy, Oct. 14th, 1854, MS. State Department.)

We now have the report of the American Commissioner, which communicates the agreement of the two commissioners, dated El Paso, August 16th, 1855, to the following effect:

1. Each commissioner adopts all monuments, mounds, lines, and points established by the other.

2. They jointly agree to declare the true line of the treaty established in its several parts, and "fully surveyed, marked, and established throughout its whole extent, as soon as notification is received" of the completion of a small designated section of the line, in charge of their assistants, between the 111th meridian and the river Colorado.

3. They agree to meet again at Washington on the 1st of April, 1856, in order to make proper plans of their operations.

Does this constitute the agreement of the treaty, and, consequently, the establishment of the line, or does it not?

I conceive that it does, beyond all doubt.

The consideration that a contingency yet remains, namely, reception of report from the assistants on a certain point is, in my judgment, wholly immaterial, except as involving postponement until that report shall be received. That is evidence only. When received, it consummates the agreement, and the line then becomes, *ipso facto*, established.

Nor is the completion of calculations or preparation of plans, which the commissioners propose to attend to hereafter, any way material. All that is but illustration or authentic statement of the acts already performed, namely, survey, marking, and establishment of the line.

On the face of the record, then, the line, upon the happening of the specified contingency, is to be deemed and taken as established.[a]

* * * * * * *

I presume, in this case, good faith on all hands. If there exists a shadow of suspicion to the contrary, considerations of self-respect, as well as of international comity, will of course enter the mind, at least as to the time when the Uni ted States shall definitely act in the premises.

This Government can have no inducement, and feels no desire to stand on mere points of strict legal right as against the Mexican Republic.

On the other hand, it is not presumable that any new President of that Republic will seek to disturb or defeat international engagements made by treaty between one of his predecessors and the United States.

As the matter stands, the commissioners have made an agreement which is complete without further signature, provided, and at the time when, a certain definite act shall be performed. The nonperformance of that act on either side will be a breach of engagement on the part of the commissioner, that is, of the government which such commissioner duly represents.

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[a] [The greater portion of the opinion is omitted as irrelevant to this case. For full text of the opinion, see Official Opinions of the Attorneys General of the U. S., cited supra, page 203, footnote. A certified copy of the opinion is held at the disposal of the Commission.—Agent's note.]

Meanwhile, not anticipating any such breach of engagement on either side, and regarding the whole subject in the single aspect of a question of right under the law of nations, it seems to me, that it is the Mexican Republic, which Mr. Salazar represents, not this or that President of the Republic; that his commission remains good and effective, so far as regards our own Government, until notice be given us of its termination; and that the line having been surveyed and marked, and agreed to (although prospectively on one point) according to the treaty, is to be deemed, on the happening of that event, thereupon established, as well with respect to the Mexican Republic as the United States. No separate action of either government, now, can change the line; for the treaty stipulates in the most emphatic language that the agreement of the commissioners, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the contracting parties, shall fix, settle, and establish the new boundary line of the two Republics.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Gray to Mr. Stuart.[a]

ENCAMPMENT U. S. BOUNDARY COMMISSION,
Santa Rita del Cobre, New Mexico, August 11, 1851.

SIR:

In my letter to the department of the 3d instant, I made allusion to a special communication upon a subject of which I will now speak, deeming it of importance, as difficulties have arisen in the commission that threaten continued trouble and confusion, and which, it will be seen, I endeavored from the beginning to prevent.

So long ago as February 20 and March 1, 1850, I addressed letters to Mr. Ewing, then having charge of the boundary survey as Secretary of the Interior. These letters will be found published in Senate Ex. Doc. No. 34 of the 31st Congress 1st session, pages 5 and 11. In these communications, which I felt it my duty, as surveyor under the treaty of Guadalupe Hidalgo, to make to the department during an adjournment of the joint commission, it will be seen what my advice was. In that of March 1st, I use the fol-

[a] [This letter is reprinted from S. Doc. No. 119, Senate Documents, 1st sess. 32d Cong.—Agent's note.]

lowing language, to wit: "Supposing that the department may wish to re-organize the commission on our part, prior to its meeting that of Mexico in November next, I beg leave to submit the following suggestions:

"That the surveyor, under the 5th article of the treaty, have the direct supervision of all astronomical observations where they may be desired, as well as the surveys on the line, *similar to Mr. Salazar,*[a] *the Mexican surveyor and civil engineer;* and that he also have the planning of his party—the department having the supervision of the selection and retention of those who act under him. That if it be deemed expedient to have a portion of the topographical corps of engineers upon the work, they be directed to aid and assist the surveyor. Should three of them be attached to the survey, but three other *competent* assistants would be necessary for the further demarcation of the line. *At El Paso del Norte, or from the adjoining settled districts, employés and laborers can be had to perform the other duties.*

"The surveyor never objected to superintend the astronomical work, but has always been ready to make such observations as might be required along the line, together with his other duties; but an officer was attached to the work with the title of '*Chief Astronomer and Head of the Topographical Scientific Corps,*' and which, from the independent position, has caused some confusion."

It appears, from the multiplicity of matters which the Secretary had upon his mind, that the chief of the topographical bureau was referred to in arranging and drawing up plans for the general direction of the survey of this boundary under the treaty, and my letters to Mr. Ewing, I conclude, were referred to him. These communications were not answered by the Secretary, the cause of which remains unexplained. Col. Abert, chief of the topographical corps of engineers, says, in a letter to Mr. Ewing, dated April 10, 1850, (as seen page 18, Senate document No. 34:) "*These two parts, namely, from the Pacific to the Gila, and from the Paso of the Rio del Norte to the Gila, are the only parts which require to be marked;* the other parts of the boundary *being rivers*, are already marked by the rivers themselves of the treaty."

The survey of these would correct the geography of the boundary, but could not change it. It is a river boundary, known and marked by the rivers of the treaty.

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[a] [Italics in this letter are in original.—Agent's note.]

The topographical engineer cannot be under the "direction of the surveyor, as proposed by Mr. Gray."

Major Emory, of the topographical corps of engineers, in his letter to the department, dated April 2, 1850, (see page 15, Senate document No. 34, part second,) also says: "Another consideration is, the treaty makes the Gila, for a certain extent, the boundary. The Gila does not always run in the same bed; whenever it changes, *the boundary must change*, and no survey nor anything else can keep it from changing. *The survey of that river, therefore, as it fixes nothing—determines nothing—is of minor importance.*"

Again, Colonel Abert, in his notes upon the organization of the survey, says, "the *commissioner* is not to interfere or direct the *modus operandi* of the survey, &c., *this being a duty for which the chief topographical engineer is responsible.* The chief topographical engineer to direct all the surveying operations, as well those of the civil engineers or surveyors, as those of the officers of his corps," &c.

It is not evident, Mr. Secretary, what endless difficulties and troubles this advice, if followed, would lead our government into, and which it has already partly done? It is to be regretted, through Colonel Abert's influence and advice, the position he has placed the many truly scientific men of his corps in, with reference to their chief's ignorance. What Colonel Abert had as his basis to govern him in drawing up his plans and expressing his ideas, must have been very extraordinary; at least, so it seems. Could he, Mr. Secretary, have been overhauling or rummaging amid the archives of the naval exploring expedition, and by mistake got hold of some ancient treaty of the king of the Tonga islands? He certainly mistook the calling, for it is clear his notions are far from being in accordance with the treaty of Guadalupe Hidalgo, made under the supervision of many of the most distinguished men.

That portion of the treaty which relates to *this* survey is as follows: "In order to designate the boundary line with due precision, upon authoritative maps, and to *establish upon the ground landmarks which shall show the limits* of both republics as described in the *present article*, the two governments shall each appoint a *commissioner and surveyor*, who, before the expiration of one year from the date of the exchange of ratification of this treaty, shall meet at the port of San Diego, and proceed to run *and mark* the said boundary, in its *whole course*, to the mouth of the Rio Bravo del Norte. *They* shall keep journals, and make out plans of *their*

operations; and the result agreed upon by *them* shall be deemed a *part of this treaty*, and shall have the *same force as if it were inserted therein*. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

"*The boundary line established by this article* shall be religiously respected by each of the two republics, and *no change shall ever be made therein*, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution."

Is it not plain, Mr. Secretary, who is responsible under this treaty? Is the chief topographical engineer, appointed by the President to accompany the commissioner and the surveyor—(*vide* the letters of the illustrious James Buchanan, page 1, Senate Ex. Doc. No. 34, 31st Congress, 1st session)—is he, the *topographical engineer*, responsible, as Colonel Abert advises, for the surveys of this boundary under *this* treaty?

Now, Colonel J. J. Abert says the topographical engineer "cannot be *under* the surveyor." The surveyor of what? That office established by a treaty which terminated a bloody war—an office to co-operate in finally settling a difficulty which was chiefly the origin of this war. Does he look upon it as a less position than that of a colonel of the topographical engineers? Had he referred to the *individual* holding that office, instead of the *office* itself, I should have thought of it differently. It is a most singular rebuke. Has he forgotten that the illustrious Father of his Country was a surveyor? Has he forgotten the respect due an office once held by him? To say the least of it, he has forgotten that respect due to the law-makers, *his* (Colonel Abert's) undoubted superiors. At any rate, I do not consider Colonel J. J. Abert as a competent judge to sit upon the commission of surveyor which three Presidents and a Senate have decided in the premises.

Is not his advice, Mr. Secretary, relative to the survey of the Gila and the Rio Bravo del Norte, in direct opposition to the express stipulations of the law? Is it not stated positively that we are to *run and mark* the boundary line in *its whole course*? to say nothing of the absolute *importance* of the demarcation. He says: "The other parts of the boundary being rivers, are already marked by the rivers themselves of the treaty. The survey of these would correct the geography of the boundary, but could not change it." The importance of their being *marked* was well known to the commissioners who made the treaty. It is absurd to suppose that if

the river changes, the *boundary* line must change also; for, looking upon it in this light, most serious consequences may ensue to the United States, as well as to Mexico. To regard it as Colonel J. J. Abert does, there would be endless difficulties. The Rio Grande changes its bed almost annually, in some part or another, and if we do not mark it without delay, there is imminent danger of the loss of important grounds to us. The flourishing city of Brownsville, in the State of Texas, is one instance, where, I understand, in a few years the river may change. And, sir, after we have marked the course of the river now, could this town belong to Mexico? Certainly not. It cannot be so construed, for such was not the intention of those who made the treaty. According to Colonel Abert and Major Emory's advice, however, it would be lost to us.

Another case which has come under my own observation is that of the towns of San Elizario, Isleta, and Socorro. They are ours now—so acknowledged—for our flag is hoisted over the garrison of the first-named place; although if the line had been marked a few years ago, when the river ran to the east of them, as it did, they would have been now belonging to Mexico. Those who made and ratified this treaty were well aware of the changes to which the currents of rivers are liable. Free navigation is stipulated; but it is also understood that where we *mark* these rivers now, there the boundary must continue to be. The result agreed upon by us becomes a part of the treaty, and so it is comprehended by the Mexican officers.

I have no doubt that Colonel Abert has read much; but "it is better to read little with thought, than much with levity and quickness;" and had he taken the law of *this* survey, which is not very lengthy, and reflected upon it, he would not now perhaps be answerable for his many extraordinary scientific conclusions. It is a pity that his "floodgates of wisdom" had not been barred up, for then much of the present trouble would have been avoided. If his advice is continued to be followed, we shall inevitably be plunged into interminable international as well as domestic difficulties.

I have referred to the facts above to show that delays are dangerous to us; and should Colonel Abert or Major Emory have the running of this boundary, according to views entertained and expressed by them, it could be imagined what the results might be. The fact of the business is, Mr. Secretary, that the true and legitimate object of the survey of this boundary line has been lost sight of by some of the topographical corps, in "the cause of science,"

the necessity for "the society of the learned," (as per Emory's letter, page 9, Senate Ex. Doc. No. 34, &c.,) and amid so much scientific advice, together with the care in carrying out to San Diego all the rare and delicate astronomical instruments. (See Major Emory's letter, page 17.)

Could I have been permitted to carry out my plans, and not been interfered with by this unfortunate scientific advice, I am convinced that the moneys already expended would have been sufficient to run and mark the whole line of boundary, and with every degree of accuracy and practicability called for by the treaty. I am also sure that the time for the end of the demarcation might have been calculated on; and this, I believe, would not have extended beyond the time of the present administration. Indeed, sir, I can now well see the object and propriety of the reference to the "celebrated remark of Lord Castlereagh" for limiting similar commissions, and which was alluded to by Mr. Webster on the floor of the Senate some few years since.

A few days before I was to leave Washington, in January, I asked at your department to let me see the letter of the 8th October addressed to me at San Diego, and which, having previously left that place, I did not get. Upon reading it, and after turning over the letter-book, I first saw the instructions to Mr. Bartlett dated 23d October. Not having time just then to read and reflect upon them, I made a note of the date of it, and also that of mine already mentioned. I asked the chief clerk, Mr. Goddard, to furnish me with copies of the same, if not incompatible with the public service. He said, certainly. Some time after the crisis of my illness was past, the copies of these two documents were enclosed to me at the hotel. When able, I read and reflected deeply upon them, and finally concluded, under all the circumstances, and by advice, not to interfere at all with the department. I was satisfied that the intention of the President and yourself was in nowise to throw obstacles in the way of running this line, nor to conflict in any manner with the rights, powers, or duties of the officers of the treaty. I could not think so, sir; I was satisfied with my instructions, my position, my title. The commissioner was the proper person, I knew, to interpret his own instructions, and that they would be so done according to law. In fact, I had already got into one correspondence with the department, and my position was defined; and I concluded that it would have been presumptuous in me to interfere with things which might never occur. Had I been in the situa-

tion to have called upon you, Mr. Stuart, after seeing them, I might have remarked upon one or two parts of the communication. I knew they had been written and issued long before I reached Washington, and that it was undoubtedly left to the commissioner to interpret them.

With regard to the present troubles in the camp, I consider I am in nowise responsible. The shocking-bad arrangement of the surveying parties, and in fact all the parties that came out here, owes its origin to causes beyond the control of the surveyor, who was held afar off; and who, had he had the powers sent to Major Emory, I am certain, Mr. Secretary, would have made it the first consideration to be upon the ground to meet the Mexicans, and thus have prevented what now is so serious a matter, caused by the *signature* of one of the officers of the topographical corps. In the latter case, I refer to the southern boundary of New Mexico.

I was happy and pleased when I learned that Colonel Graham was coming out. I said all along that I would be happy to co-operate with him, to aid and assist him in all his astronomical duties. This I told him at Washington; and I am now likewise so disposed. This was all I thought he expected of me, and as I understood it. He tells me that he is not above me, nor did I ever for a moment suppose he was, for my duty under the commission I had the honor to hold forbade such an idea: it being contrary to the law, while another was commissioner, I could not think so. I recollect a conversation one day with Major Emory, in which he remarked: "I suppose you know he (alluding to Colonel Graham) is above you." I think my reply was, that "there were *some men* I was perfectly willing to serve under." Courtesy and friendship would always dictate to me to give way to men of such high scientific attainments and position; but this should not be allowed to conflict with duty.

Mr. Secretary, must I be annihilated entirely in *my duties*, and still hold my present commission? I was instructed to report to the commissioner. He ordered me, on my arrival here, in accordance with the agreement of the joint commission, during the absence of Colonel Graham, to organize parties for the linear survey of the Gila river. This I did without delay; and we are now waiting for transportation to be turned over by the quartermaster, and for instruments from Col. Graham, if they choose to furnish them.

And now, Mr. Secretary, the above is what I referred to in my communication of the 3d instant.

"But, in a season of reflection after many days, a thought stood before me in its garments of the past; and lo! a legion with it. They came in thronging bands. I could not fight nor fly them; and so they took me to their tent, the prisoner of thoughts. I have told of errors near akin to truth, and wholesomes linked with poisons; of subtle uses in the humblest, and the deep-laid plots of pride."

I have the honor to remain, with high esteem, your obedient servant

A. B. GRAY,
U. S. Surveyor, under Treaty of Guadalupe Hidalgo.

Hon. ALEX. H. H. STUART,
Secretary of Department of the Interior,
Washington City.

Mr. Lincoln to Mr. Frelinghuysen.

WAR DEPARTMENT,
Washington City, June 26, 1884.

SIR: Acknowledging the receipt of your letters dated, respectively, the 10th and 13th instant, and their respective enclosures touching the disputed ownership to the islands of Morteritos and Sabinos in the Rio Grande, I have the honor to state that Brigadier General W. H. Emory, who in accordance with the request contained in your letter first above mentioned was directed to make examination of records and report upon the subject, reports under date of the 19th instant as follows:

"Respectfully returned with the information that by reference to original notes & maps in State Dept., I find, Islands No. 12 & 14 were assigned to Mexico, & 14 I believe to be Id. Sabinos referred to by Senor Romero.

"Island No. 13. was assigned to the U. S. It is no doubt the Island called by Senor Romero Morteritos, & by me Beaver Island. I say of that Island in my report, that 'the waters of the Rio Grande are divided at that point into three parts, & and the channel that lies nearest to the Mex: shore is so narrow that Steamers can with difficulty pass through it, yet the branches, by reason of their shallowness are wholly impassable for them.' An attempt was made by the Mex: local authorities to arrest a steam-boat in its passage through the narrow channel, but the actual experience of the navigator proved it to be the true channel & consequently the boundary between the two countries.

"It was further agreed between the Commissioners that in case the Channel changed, the right of Navigation should remain unimpaired to both countries, but the jurisdiction of the land should remain as we had arranged."

Very respectfully, Your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

The Honorable The SECRETARY OF STATE.

Mr. Knox to Mr. Dennis.

DEPARTMENT OF STATE,
Washington, April 13, 1911.

WILLIAM C. DENNIS, Esquire,
Agent of the United States in the
Chamizal Arbitration with Mexico,
Washington, D. C.

SIR: In response to your oral request that the appropriate officers of the Department of State make affidavit as to the results of their search in the records and files of the Department for a communication from the Mexican Legation in the City of Washington to the Department of State, dated the 17th of November, 1874, or the 17th of December, 1874, referred to in the Case of the United States of Mexico in the Chamizal Arbitration, the Department encloses herewith the affidavits of Mr. John R. Buck, Chief of the Bureau of Indexes and Archives, and Mr. Thomas John Newton, Assistant Chief of that Bureau, regarding the matter mentioned.

I am, Sir, Your obedient servant,

P. C. KNOX.

Enclosures: As above.

[Inclosure 1.]

In the matter of the Chamizal Arbitration between The United States and Mexico.

THE UNITED STATES OF AMERICA,
District of Columbia. } *ss.*

I, John R. Buck, a Citizen of the United States, at present residing in the District of Columbia, Chief of the Bureau of Indexes and Archives of the Department of State, having been advised that the Case (in Spanish) of the United States of Mexico in the Chamizal Arbitration refers to a communication from the Mexican

Legation in the City of Washington to the Department of State of the United States, dated 17th December, 1874, (the date in the English translation being given as 17th November, 1874,) relating to certain changes in the course of the Rio Grande; being duly sworn, do depose and say:

I have caused an exhaustive search to be made of the pertinent records of diplomatic correspondence in the Department of State and of the chronological file of communications from the Mexican Legation in Washington to the Department of State covering the entire calendar years of 1874 and 1875, which search has failed to disclose any communication of November 17, 1874, or of December 17, 1874, or any record of the receipt of, or any acknowledgment of, or any reference to such communication.

JOHN R. BUCK.

Sworn to and subscribed before me, this 13th day of April, A. D., 1911.

[SEAL.] WM. MCNEIR,
Notary Public.

[Inclosure 2.]

In the matter of the Chamizal Arbitration between The United States and Mexico.

THE UNITED STATES OF AMERICA }
District of Columbia, } *ss.*

I, Thomas John Newton, a Citizen of the United States and a resident of the District of Columbia, Assistant Chief of the Bureau of Indexes and Archives of the Department of State, being familiar with the records of diplomatic correspondence of the Department of State and experienced in searching the same, having been advised that the Case (in Spanish) of the United States of Mexico in the Chamizal Arbitration refers to a communication from the Mexican Legation in the City of Washington to the Department of State of the United States, dated the 17th December, 1874 (the date in the English translation of the Mexican Case being given as 17th November, 1874), relating to certain changes in the course of the Rio Grande; being duly sworn, do depose and say:

I have personally made an exhaustive examination of the records of and the file of correspondence between the Mexican Legation in Washington and the Department of State for the entire calendar years 1874 and 1875; the said record consisting of a series of chronological entries of the communications from the Mexican Legation to

the Department of State and from the Department of State to the Mexican Legation respectively, in the bound diplomatic registers Volume 2 to the Department and Volume 2 from the Department, and a chronological series of textual copies of communications from the Department to the Legation in the bound volume entitled Notes to Mexican Legation, Volume 8; the said file being a collection of the originals of the communications from the Legation for the period in question, chronologically arranged, and bound in the volumes entitled Mexico—Notes, Volumes 23 and 24; and have failed to find any communication of November 17, 1874, or of December 17, 1874, or any record of the receipt of, or any acknowledgment of, or any reference to such communication.

THOMAS JOHN NEWTON.

Sworn to and subscribed before me, this 13th day of April, A. D., 1911.

[SEAL.]

WM. MCNEIR,
Notary Public.

REPORT OF W. W. FOLLETT, CONSULTING ENGINEER OF THE UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY COMMISSION, TO THE UNITED STATES COMMISSIONER, "THE STUDY OF AN ALLUVIAL STREAM."

[International Boundary Commission, United States and Mexico.—American Section.]

A STUDY OF AN ALLUVIAL STREAM.

PART 1. GENERAL DISCUSSION.

1. General Statement.

The bed of a river which flows through an alluvial formation is always in a state of more or less unstable equilibrium. Its channel changes its position both by erosion and deposit, when one bank is eaten away and the other built up, and by avulsion when the river leaves its channel and makes for itself a new one.

The banks have a certain resisting power against erosion, depending on the material of which they are composed. The flowing water has a certain eroding power, dependent on its velocity, the sharpness of the bends through which it flows, and hence the acuteness of its angle of impact against the earth and the amount of silt which it is already carrying. When the eroding power of the water exceeds the resistance of the bank, erosion occurs.

The amount of silt flowing water will carry is dependent on its velocity; the greater the velocity, the larger is the percentage of

silt and the coarser is the material which it will carry in suspension or more in waves along the bed of the stream. Water fully loaded with silt will not carry away in suspension material from its banks, although, if the current be swift and a bend sharp, it will tear material from the bank, throwing it into the bed.

As erosion usually occurs on the concave, or long side of a bend, the channel grows longer and longer until the eroding power of the water is, through decreased velocity, exhausted, or a bend cuts through and erosion begins again.

Erosion is not continuous but spasmodic. It occurs in its greatest intensity during floods and on their subsidence and it may cease during low water. It may stop in one bend and begin in another. Before all of its eroding power is gone, however, a flood is sure to bring about some avulsive change which will shorten the stream, increase the velocity and start erosion. The result is that the channel of an alluvial river is continually wandering from one side to the other of an area which is aptly termed its erosive plain. A map showing the position of such a river each decade for half a century would be a maze of channels crossing and recrossing each other at all angles. (See exhibit No. 1.) [a]

2. Unstable Condition.

The time never comes when the channel of an alluvial stream is in stable equilibrium. There will always be some places, probably in sharp bends, where erosion of the banks will occur during flood. The bed is constantly lengthening, seemingly striving to reach stable equilibrium. Before this is reached, however, experience shows that an avulsive change is almost certain to occur, either by the cutting through of a loop or by the opening of a new channel of some length across overflowed land. This avulsion will shorten the thread of the river's course, increase the slope, accelerate the velocity of the current, increase the eroding power, and more rapid erosion results.

The effect of a shortening of the channel will be felt for many miles above and below the cutoff and for many years—until, in fact, the river stretches itself to its former length. Then comes another cutoff and a repetition of the process. Between 1852 and 1898, over 60 bends cut through on the Rio Grande between Rio Grande City and the Gulf of Mexico, some 120 miles along the river's valley, but 250 by the channel. These cutoffs shortened the river fully half its length, or 125 miles, yet in 1898 it was just

[a] [See U. S. Countercase, portfolio map No. 9.—Agent's note.]

about as long as it was in 1852. What had been lost by cutoffs had been gained by erosion.

These avulsive changes are sometimes hastened by the fact that all silt bearing streams tend to build up their beds and banks so that the water flows on a ridge. When the channel lengthens, the current slakens, the silt falls more rapidly, the building is accelerated, the bed is filled so that it will not carry its former amount of water and the overflows become deeper. The slope away from the stream on this ridge increases, and when it becomes great enough, the river may leave its bed during an overflow and make a new one through the lower ground. In this way was the Island of San Elizario below El Paso formed in 1856 or 1857. Of course, this kind of change cannot occur on ground which is above overflow. Then the change can come only from the eating through of a loop. These are true avulsive changes, and, when one occurs, it cannot be mistaken for an erosive change. The trees, houses, fences and other landmarks on the area cut off are found intact but on the opposite side of the flowing water. The old bed of the river is also seen, with both banks in existence. Subsequent floods frequently fill with sediment this old channel near the new river so as to practically obliterate it, but, remote from the stream, it can be found.

3. Velocity and Eroding Power.

The velocity of flowing water, other things being equal, varies as the square root of the slope of the stream. The fall of an alluvial valley, is a fixed quantity. The rate of fall of the stream will vary with its sinuosity. It may happen that the channel of a stream is so crooked that it is twice as long as its valley and hence that its fall per mile is only one-half that of the valley. The resulting velocity would, were the increased friction due to the bends disregarded, be seven-tenths of that which it would have if the channel were as straight as the valley; the increase of friction due to the bends would be a material factor, however and would, in ordinary cases, reduce the above ratio of seven-tenths to one-half or about that.

The velocity increases rapidly with an increase in the amount of water which the stream is carrying. The formula used for computing velocity is quite complicated and will not be quoted here, but, as an example, a stream 300 feet wide and 6 feet deep will carry, with a fall of 2 feet per mile, 3.2 times as much water

as one of the same width but only three feet deep. The area of the cross-section is doubled and the velocity is increased over 60%. The result is, that the eroding power of the six foot stage is much greater than is that of the three foot stage. There have been attempts made to reduce to a formula this eroding power of flowing water and its effect on a bank of given material which it attacks at a given angle, velocity and depth, but so many elements enter into the problem that the computer becomes lost in a maze of figures and has no confidence in the accuracy of the result which he obtains. For the purpose of this paper, it is sufficient to say that the eroding power of flowing water is a function of the following:

1st. Amount of silt already in suspension.

2nd. Sharpness of the angle of attack on the bank and

3rd. The velocity with which it is moving,

and that it varies inversely with the first and directly with the last two.

4. Method of Erosion of Banks.

The resisting power of the bank depends, of course, upon its material. If it is sand and alluvial deposit, its resisting power is slight. If of clay or clayey soil, it is great. A clay or soil bank is, however, frequently underlaid by a stratum of sand near the bed of the stream. The water will wash out this sand and then the overlying material, often many feet in thickness, breaks off in large pieces, rolls into the stream and is gradually dessicated and carried away. It is in this last way that a stream usually attacks and destroys ground on its banks whose surface is above overflow. In time of flood, the erosion of the sand stratum is constantly going on but such may be the tenacity and thickness of the overlying soil, that it will overhang until quite a portion of the sand is gone. Then it will crack, sometimes quite a distance back from the edge of the bank, begin to move and then go with a rush and a roar, carrying with it whatever may be there, as trees and houses, to be swallowed up by the stream, while more of the sand is being washed out from under the mainland.

The rapidity of erosion varies greatly. If the current is thrown hard against a sand bar of recent formation, it will melt away with great rapidity, perhaps a hundred feet or more going in a single day. A sandbank, heavily timbered, may slide in, little by little, carrying its trees with it. These will form a temporary protec-

tion, but are soon undermined and moved away, when more sand slides in. Progress on such a bank in a stream like the Rio Grande, may be anywhere from a few feet a day up to fifty or more. On a clay bank with a thick sand substratum and a heavy current against it, fifty feet, or even a hundred may go in a single day or, possibly, in a few hours.

The size and depth of the stream have much to do with the rapidity of erosion. On the Mississippi, acres of area sometimes go at once. On the Rio Grande, which is a much smaller stream, the chunks are not so large, but may follow each other at shorter intervals of time.

As before stated, erosion is spasmodic, not only greatly decreasing or ceasing entirely, during low water, but sometimes ceasing, in a given bend, for several years and then, when a change somewhere else has increased the eroding power of the current beyond the limit of resistance of the bank, beginning again. But, whenever a bank yields to the attack of its stream, whether it go particle by particle, in an imperceptible way, or in great pieces, rolling bodily into the river, with great noise and commotion and carrying with it whatever there may be on it, whether trees, orchards, vines or houses, if all is ingulfed and no trees or houses or other landmarks are left undisturbed and standing in their original position, but on the opposite side of the flowing stream, the Engineer recognizes erosion. This is true whether a bank gives a little at each high water or a large amount during one flood and then resists the stream for a few years, again yielding, till after this cessation. To the technical mind all is slow and gradual erosion, as distinguished from the quickness of an avulsive change—when a new channel is formed and the old one abandoned—whatever may be the rate of movement of the erosion.

5. *Formation of Bars.*

Whenever a bank on the outer side of a bend is caving, a bar creeps out from the inner side. This is caused by the slackening of the current, owing to the increase of the cross-section due to the caving and consequently, by the decreased silt bearing capacity of the water and also by the tendency of water, the same as of any other mass, to move in a straight line. The swiftest current is close to the caving bank while there may be still water near the opposite shore. So silt is dropped and the bar is built up.

The material in a bar does not come from the opposite bank but from some caving bend farther up stream, while the earth cut from in front of it goes on below, to form some other bar in its turn. If a bend be a gradual one, the current will not crowd the outer side as hard as in sharper bends but will be against it, so that the shoal water, slow current and bar may be expected on the convex, or inner, side of any curve, whatever may be the rate of curvature.

The study of the method of formation of alluvial bars is very interesting. Their shape, contour, method of building and final form, when they have nearly, or quite, reached high water and hence can build no higher, vary considerably but are controlled by general laws. The rate at which they are built affects very materially their shape. If, in a light bend, the river moves slowly away—and by slowly is meant something less than half the width of the stream in a flood season—then the bar builds out slowly and uniformly with its back as high as the top of the flood and with a gradual slope to the river. If, however, the erosion is greater, the bar takes a characteristic form. The tendency of all bends is to work down stream, the bar building the most rapidly below. The upper end of the bar, where it joins the old ground and about where the current starts across the river, will be high with a pretty steep slope towards the river. Going down stream, the surface of the bar will fall both down stream and away from the channel and soon a low pocket, next to the old ground, will develop, growing wider as the lower end of the bar is approached, where it may have the appearance of an old channel back of the long low point of the bar. Should the erosion continue from year to year, the bar will keep this general form, the upper end filling in with alluvial deposit and the lower spit, with its low ground behind it, extending down stream and into the bend below. Part of the bar is above water at a mean stage of the river and a part, the spit with its pocket behind it, is under water. The spit may reach clear across the river, forming what the steam boat men calls a "crossing", and it is making and shifting all the time, even in low water.

This spit and that portion of the bar which is deposited in deep water, or below a mean stage of the river, is usually sand, sometimes entirely free from clay, while the material on top is mixed with clay—or is true alluvial deposit. The pocket sometimes fills with clay, leaving a clear line of demarkation between it and the underlying sand.

If erosion is suspended for a few years and the bend is still flat, the low part may fill up so as to make the whole bar about level. The nature of this filling will depend on the silt being carried. If there is some clay, as well as sand, in suspension, the sand will deposit first on the front of the bar, while the pocket is likely to fill with clay, as above noted. Should erosion then start again, a bar on a bar will form, with the low pocket back of the new one.

In sharp bends where erosion is at first quite rapid and then slows up, a secondary high bar may form along the outer edge and across the lower end of the old one, so throwing a dam across the lower end of the pocket. Then an overflow will leave this pocket full of water, which gives the appearance of an old channel and suggests an avulsive change. Many bars similar to the one above described are known to the writer on the lower Rio Grande and he has frequently found himself, with his outfit, in the upper end of one of these pockets and has been obliged to back down stream in order to cross the spit.

There are various modifications of this form of bar building, but it is typical. Usually, the bend above a bar travels down stream until it eats away the upper end of the bar, unless a bend is cut through back of it, and a socalled banco is formed, consisting of the bar with or without some old ground. Many of the numerous bancos on the Rio Grande are wholly recent alluvial deposit, with no old ground at all.

After the top of a bar reaches a level above mean floods, vegetation will spring up on it and it soon becomes densely overgrown,—usually with willows or cottonwoods. The leaves fall on the surface and, after a few years, a thin layer of soil is formed on top of the alluvial deposit. This may or may not be above high water. Sometimes the wind blows up sandhills which are considerably above the flood level.

7. *Method of Channel Change.*

A reading of the foregoing discussion shows that changes of position of the channel of an alluvial stream occur in one of two ways, either by erosion or by avulsion. These changes may be epitomatized as follows:

Erosion moves the channel sideways and generally down stream by eating away the outside of a bend, while the inner side is filled with sedimentary deposit. It is a continuous performance in the sense that the channel moves bodily across the area eroded—one bank moving into the eroded area and the other coming along

behind. Erosion usually lengthens the stream. While it is most active during large floods, it occurs on small floods, or even on mean stages of the river.

Avulsion is the abandonment of a piece of channel and the making of a new one. It always shortens the length of the river, because, owing to the fact that water will flow more readily in a defined channel than in one just forming, the slope of the new one must be greater than is that of the old bed, that the velocity may be maintained and the greater resistance of the new unformed bed may be overcome. Hence, it must be shorter between two given points than was the old. Avulsion occurs in two ways. First, it occurs by the cutting through of a loop which has formed by erosion. If the land in the neck of the loop be above high water, then it will erode entirely through, but the change, when the river rushes through the gap formed by erosion, is an avulsive one, because the old channel around the loop is almost instantly abandoned, with both banks intact, and a new channel, perhaps very short, is formed, through the neck of the loop.

Second, it occurs when the silt bearing stream has built up its banks and bed until it is running on a ridge so high that when an overflow tops its banks, the water finds a short cut through the low ground into some bend of the river below, and tears out a new channel, much shorter than the old, abandoning, as before, its old channel, with both banks intact.

Erosion destroys the ground into which it eats. Avulsion transfers ground from one side of the river to the other with all its natural or artificial features intact.

PART II. APPLICATION TO CHAMIZAL CASE.

1. General Statement.

Between El Paso, Texas, and Juarez, Chihuahua, the Rio Grande, an alluvial stream there flowing out of a rocky stretch into an earthen bed whose banks are very friable, forms the boundary between the United States and Mexico. Its bed has materially shifted since 1827, the date of the earliest surveys, and the method of this shifting, especially since the Emory-Salazar Survey of 1852, is in question and it is the intent of this paper to consider this movement, in the light of the foregoing general discussion. The reader will please refer to the maps filed by the United States with its statement of the Chamizal case.

2. Conditions Prior to 1852.

Please refer to Map No. 3.[a] "Preliminary Map in the Chamizal Case No. 4."

It will be noted that, in 1827, the river had a gentle bend to the south in front of El Paso, running about where the county jail now stands. The old north bank is still traceable in places, and formed, below Stanton St. the limit of overflow in 1897 (see Map No. 1).[b]

Some time after 1827, the river made an extensive avulsive change, beginning about five miles below El Paso and extending for many miles down the valley. Before this change, Isleta, Socorro, and San Elizario were all on the south side of the river and the channel which was abandoned was much longer than the new one. This old bed can still be traced on the ground throughout nearly its whole length. It is marked on the Salazar Map (No. 7)[c] "Rio Viejo de San Elzeario." This change is said to have occurred about 1840. Its exact date is unknown to the writer. An examination of the map shows quite plainly the shortness of the new channel as compared with the old. Hence the velocity of the current must have been greatly increased and erosion must have been accelerated in all bends. The bend in front of El Paso evidently began to erode to the south. The Salazar Map shows a wide sandbar in front of "Franklin", as El Paso was then called. Roughly, this bar, according to the map, occupied in 1852 about ⅓ of the space between the 1827 channel and that of Salazar and was as wide, or wider than, the 1852 river. In practically all the bends below El Paso, sandbars are shown, indicating that erosion was progressing quite rapidly and that, at the time of the Emory-Salazar Survey, the river was in a decidedly unstable condition. This is further shown by the fact that the river moved, in one place in front of El Paso, an amount equal to its width in the six months which intervened between the Salazar and the Emory Surveys. The wide sand bar is further proof of rapid erosion.

3. Changes Subsequent to 1852.

It is fair to assume that the river continued to work south after the Salazar survey, as well as before, but it was likely that, having materially lengthened itself, it was approaching equilibrium and

[a] [The reference is to U. S. Case, portfolio map No. 3.—Agent's note.]
[b] [The reference is to U. S. Case, portfolio map No. 1.—Agent's note.]
[c] [The reference is to U. S. Case, portfolio map No. 7.—Agent's note.]

that the bar was building up to a level surface. In 1857, however, an extensive avulsive change occurred below San Elizario, forming the Island of San Elizario (See map on page 108, Proceedings of the International (Water) Boundary Commission, Part I). This island was surveyed in 1896 by the Commission and it was found that, forty years after the change, the new channel was 20% shorter than the old. It must have been very much shorter when first formed. This change must have started all bends in its neighbourhood to cutting again and possibly affected them as far up as El Paso. A few years afterwards, in 1864 to 1868, there came a series of large floods which greatly accelerated the caving of the banks. The ground on the right bank in front of El Paso—in what was known as "El Chamizal", a portion of Juarez—was, according to the testimony taken by the Commission in 1896 in the Chamizal Case No. 4, old land above overflow. The soil was from one to one and a half meters deep and it was underlaid by sand and fine gravel. It was into this that the river was encroaching, as well as into the bend to the north just below "El Chamizal" and in front of Magoffinsville (See Map No. 7).[a]

The maps and the testimony prove that the river moved into the Chamizal tract. It must have moved in one of two ways, either by erosion or by avulsion. It could not have made a new channel through the land because the latter was above overflow. It could not have cut off a loop because none existed. Consequently, the conclusion must be reached that the river ate away "El Chamizal" by erosion. A careful consideration of all the conditions, giving due weight to the general laws which govern the movements of an alluvial stream, as formulated in Part I of this paper, lead to this same conclusion. The characteristic bar was left in front of El Paso. The spit with its pocket behind it existed. The front and upper end of the bar was high. Succeeding low floods backed water into the pocket and deposited clay, at the same time building up the spit with alluvial deposit. All this is admirably shown on Map No. 5, especially in the profiles at the bottom and particularly in the section "A B" in the lower left hand corner. Here is seen the soil above extreme high water on the right bank, with its underlying stratum of sand into which the river cuts deeply.

At the left is the sand spit, with its pocket back of it filled with clayey material and the whole overlaid with sedimentary deposit with a light topping of soil of recent formation. No more con-

[a] [The reference is to U. S. Case, portfolio map No. 7.—Agent's note.]

clusive demonstration of the principles formulated in Part I of this paper could be found. It is likely that, had careful borings been taken on the line "C D", the demonstration would have been equally good but on a larger scale, as the distances are greater.

The depression shown by the contours may be the original pocket left behind the bar, deepened at its upper end by flood waters in May 1891 (See bottom of page 183 and top of page 184, Appendix to United States Case). It is likely, however, that the old bed of the pocket lies deeper and that these contours represent some merely adventitious undulation of the surface. Their interval (0.2 meter), when compared with the scale of the map (1 in 10000, or 800 feet to the inch) makes the depression appear much more prominent than it would really be on the ground. Take, for instance, the point on the north side of the depression where the line "C D" cuts the contours. It crosses four contours in 40 meters. This would be a rise of 0.8 of a meter in 40 meters, or a 2% slope. Similarly, on the south side eight contours are crossed in 80 meters. This is also a 2% slope. On the ground this would not be noticeable to the casual observer. What appears on the map to be a defined channel is simply a slight undulation in the surface.

On December 21, 1895, the writer, then an assistant engineer in the service of the Commission, ran a transit and level line across the ground on which this channel is shown, for the purpose of locating the smelter ("fundicion"), and the trees shown on Map No. 4 and the elevations in his old note book do not give indication of any such depression as is here shown. The lowest ground found was around the smelter and north or north-west of it (the ground here was level). The smelter (marked "Fundicion" on Map No. 5)[a] is shown on this Map as being outside of the depression marked on it. The highest point found was 360 meters north-west of the smelter. It plats on the map in the depression but the ground was one meter higher than at the smelter. Map No. 5[a] shows it 0.8 meter lower. Forty meters south of this was a point also platting in the depression which was level with the smelter ground or one meter lower than the ground 40 meters north, thus showing that the surface was somewhat broken. Another point was about one hundred meters east of the line "C D" and in the center of the depression. The ground was 0.4 meter higher than at the smelter. Map No. 5[a] shows it 0.8 meter lower. There was

[a] [The reference is to U. S. Case, portfolio map No. 5.—Agent's note.]

no flood between December 1895 and May 1896, the date of Map No. 5, to change the contour of the surface. The writer cannot account for the discrepancies between the elevations, his showing uniformly level or higher ground than at the smelter, all over the tract shown on this map as a depression.

There is one material modification of the usual conditions, which occurs here at El Paso. Ordinarily, while the river was cutting away "El Chamizal" it would have been cutting the left bank in the reverse bend above and, long before it had reached its extreme southern location in 1888, it would have eaten away enough ground above to be attaching the upper end of the bar. But the river comes out of a rocky bed above this bend. The left bank is hard material for quite a distance—some 500 meters—below the Mexican dam and about down to the point marked "headgate" on Map No. 1. It starts the river in a straight course to the south-east. The Salazar channel, shown in green on Map No. 1, does not fit the ground well, going into this rocky point on the United States side and into the acequia madre on the Mexican side—both impossibilities—but it will be seen, by referring to the maps, that its general course coincides quite closely with the river of 1896, except that it was not so straight as the latter and laid a little south—or west—of it. This rocky bank has evidently acted as a training dyke and has held the river in virtually the same position for a mile below it during many years.

4. Rate of Movement.

An examination of Map No. 3 of the United States Case discloses the fact that between 1827 and 1852, the extreme movement of the river to the south in front of El Paso was 870 meters, or an average of 35 meters per year.

Between 1852 and 1888, the extreme movement was 840 meters, or an average of 24 meters per year. This distance is between the south bank of the 1852 channel and the dotted line marked "south bank of the river in 1888" and includes the area marked "land redeemed by jetties". The testimony shows that there was some material movement between 1852 and 1863, a large movement during the five years 1864 to 1868 inclusive and considerable movement between 1869 and 1888. It is not plainly brought out what proportion of the movement occurred during each of these cycles, but a careful reading of the testimony would indicate that

the following would be a fair apportionment of the total of 840 meters:

1852 to 1863 11 years 1/6 of movement—140 meters—13 meters per year.

1864 to 1868 5 years ½ of movement—420 meters—85 meters per year.

1869 to 1888 20 years ⅓ of movement—280 meters—14 meters per year.

There were undoubtedly dry years in the first and last during which no movement occurred, so that the average for the years when it did occur would be more than given above. During the five years 1864 to 1868 there was, according to the testimony, a flood every year—so that this mean would represent the average erosion for each of five floods. The question is raised as to whether this is a normal erosive movement of the Rio Grande during a flood, or whether it is so abnormal as to be classed as other than an erosive change. The best way to settle the matter is to compare this with known movements of the river since it has been under systematic observation.

Please refer to exhibit No. 1.[a] This is a composite map made under the writers direction from data in his office. The legend fully describes it. The Salazar channel is uncertain in some places. The Heldt channel is inaccurate and should be considered as simply indicating the general position of the river in 1889. The channel marked "Follett Channel 1899" was platted from a survey made personally by the writer in March 1899 and is accurate. The one marked "Follett channel 1907" was platted from a survey made in October and November 1907 under the writer's personal direction and is accurate and this map shows the correct relative positions of the two channels.

In July 1898 a long bend below El Paso eroded through forming the San Lorenzo banco and shortening the river some three miles. In 1899 the artificial cut-off at Cordoba was opened. It shortened the river some four miles. There was no flood that year to scour it out, but in 1900 the river went through it. These two changes increased the velocity and started erosion as did the cutoffs of the early 40s and of 1856–7.

Attention is invited to the portion of the composite map marked "Bosque de Cordoba". It will be seen that the river moved

[a] [The reference is to U. S. Countercase, portfolio map No. 9.—Agent's note.]

north-east from the Salazar Channel of 1852 some 1100 meters to the channel of 1899—or an average of 23 meters per year, counting the whole time of 47 years. Or, the river moved north-east here into United States soil at practically the same average annual rate as it moved south into "El Chamizal".

Attention is also invited to the relative positions of the Follett channels in three places. The first one is just below the cutoff, at Woodlawn. The second is on the Mexican side of the river in front of San Lorenzo banco; and the third is in front of Alfalfa. The two Surveys were 8 years and 6 months apart, or nine possible flood seasons intervened. At each of these three points the river has moved a material distance, confessedly by erosion and deposit. A scaling of the map gives the following maximum changes:

Woodlawn, 700 meters in 9 years	Mean, 78 meters per year.
San Lorenzo, 560 meters in 9 years	Mean, 62 meters per year.
Alfalfa, 540 meters in 9 years	Mean, 60 meters per year
Average of the three	67 meters per year.

There was practically no flow in 1899 and there was no flood in 1900 nor in 1902. In 1901 the flood was small, but counting it, six years of the nine caused more or less erosion at Woodlawn and at San Lorenzo. At Alfalfa, the writer is personally cognizant of the fact that no erosion occurred here in 1906 and 1907, or, that the total erosion here shown occurred in four years. The following rates of erosion for flood years results.

Counting 1901.

Woodlawn, 700 meters in 6 years	Mean, 117 meters per year.
San Lorenzo, 560 meters in 6 years	Mean, 93 meters per year.
Alfalfa, 540 meters in 4 years	Mean, 135 meters per year.
Average	112 meters per year.

Omitting 1901.

Woodlawn, 700 meters in 5 years	Mean, 140 meters per year.
San Lorenzo, 560 meters in 5 years	Mean, 112 meters per year.
Alfalfa, 540 meters in 3 years	Mean, 180 meters per year.
Average, 1800 meters in 13 years	Mean, 138 meters per year.

During the flood of 1905, when the most rapid movement of the river at Alfalfa occurred, the writer visited the ground several times during the height of the flood, and saw the water undermining the county road and eating it away at the rate of three or four

meters an hour. This was the extreme rate and only lasted for two or three days.

There are many places on the Rio Grande, both in the El Paso valley and below there, where the indications are that erosion has taken place as rapidly as at the three places cited. These three have been considered both because they are near El Paso and because a map is at hand which shows graphically and accurately the changes. That these changes were accelerated by the cutoff is granted, but attention is called to the fact that nearly half of the increase in the velocity of the current was caused by the San Lorenzo banco natural avulsive change and also to the fact that similar changes, due to natural causes, frequently occur and produce results similar to these. The fact that the cutoff was artificially made does not place the resulting changes in a special class. They are the same as if the river had, without assistance, made the cutoff itself.

A comparison of the mean movements 1899–1907, with those of the Chamizal is as follows:

1852 to 1888—36 years 840 meters—23 meters per year.
1899 " 1907— 9 " Mean 600 " —67 " " "

Or, the last three movements averaged three times that of the Chamizal.

Comparing the five flood years 1864–8 with the years 1903–1907 (1903–5 for Alfalfa):

1864–1868—5 years 420 meters—85 meters.
1903–1907—5 " (3 for Alfalfa)—138 meters.

Or, the rate for flood years of the last three movements was one and a half times as rapid as was that of the Chamizal. There has, so far as the writer is aware, been no thought by any one of considering these recent changes as other than erosive, although they were much faster than any claimed for the Chamizal. They were all "slow and gradual" compared to the avulsive change, for example, which formed the San Lorenzo banco when the river moved its channel over a mile and abandoned some three miles of it in a few hours.

Attention should be called to the fact that, at Woodlawn, San Lorenzo and Alfalfa, land above ordinary overflow was eroded away, and that, at San Lorenzo, the ground was very old, no records existing which might indicate that the bed of the river ever occupied the area attacked. The ground at Woodlawn and

at Alfalfa was also old but the soil was not so deep as it was at San Lorenzo. At the last named place, the conditions were apparently the same as they were at Chamizal. It was old ground with houses, cultivated fields and trees.

5. *Avulsive Change.*

There are no signs that an avulsive change ever occurred in front of El Paso. "El Chamizal" was a level tract of land, above overflow, with a deep soil, inhabited, cultivated and covered with houses orchards and vineyards. That it was cultivated is shown on the Salazar map (Map No. 7)[a] and that the sand bar and bosque on the recently formed land in front of El Paso was not cultivated or even covered with large trees is also shown. If an avulsive change had occurred, it could only have been by the eating through of a loop, because "El Chamizal" was above overflow. There is no physical or oral evidence that a loop ever existed here. Had an avulsive change occurred, the houses, vineyards and trees, with the deep soil, would be found north of the river. Not a tree house or vine was left. In their place was a sand bar which gradually built up with alluvial deposit from floods and then accumulated a thin layer of soil. All this is admirably shown on the cross-section on Map No. 5.[b] This map alone, without other testimony, would prove conclusively that no avulsive change occurred. Moreover if an avulsive change had occurred, the channel would have been shortened. A glance at the map shows that no change which shortened the river could have occurred.

6. *Conclusion.*

There can be but one conclusion to the foregoing discussion and that is. The river moved by erosion into the Chamizal tract and not by avulsion.

W. W. FOLLETT.

BROWNSVILLE TEXAS,
Mch. 30—1911.

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[a] [The reference is to U. S. Case, portfolio map No. 7.—Agent's note.]
[b] [The reference is to U. S. Case, portfolio map No. 5.—Agent's note.]

OPINION OF THE COURT OF CIVIL APPEALS OF THE STATE OF TEXAS IN THE CASE OF DENNY ET AL vs. COTTON ET AL, RENDERED APRIL 26, 1893.[a]

DENNY ET AL. v. COTTON ET AL.

SAME v. LEE.

[Court of Civil Appeals of Texas, April 26, 1893.]

Riparian Rights—Alluvion—Navigable Streams.

* * * * * * *

Appeal from district court, El Paso county; T. A. Falvey, Judge.

Two actions, one by Frank B. Cotton and others against W. C. Denny, and the other by the same plaintiffs against H. G. Lee. There was judgment for plaintiffs, and defendants appeal. Affirmed.

The other facts fully appear in the following statement by Fisher, C. J.:

This was a consent consolidation of two actions of trespass to try title, brought by appellees July 15, 1887, in the district court of El Paso county, respectively, against appellant Denny and appellant Lee. February 20, 1890, appellees filed amended original petitions, in which, as against said appellants, respectively, they asserted title to the land in controversy, alleging same to be all those parts of the pre-emption surveys Nos. 109 and 111 in conflict with Burdett survey No. 2, claimed under title by appellees. February 24, 1890, each appellant, in the suit against himself, filed an amended original answer, containing, besides a general demurrer and plea of not guilty, a plea in the nature of a plea in reconvention, asserting title, as against appellees, each to the land included within the lines of the pre-emption survey claimed by him. Each appellant had previously—August 18, 1887—filed in the suit against him an original answer, consisting of a general demurrer, and a plea of the general issue. February 24, 1890, appellees filed in each case a supplemental petition, interposing, as against appellants' respective assertions of title, pleas of not guilty, and five years' limitation. Same day, February 24, 1890, after due consolidation of the two causes, they were tried as one cause by the court, without the intervention of a jury, and judgment rendered in appellees' favor for the land sued for.

We find the following facts: (1) Patent from the state of Texas to Joseph Magoffin, assignee of N. W. Burdett, dated February

[a] [This case will be found reported in the Southwestern Reporter, Vol. 22, St. Paul, 1893, pages 122 to 126.—Agent's note.]

20, 1858, to the following described land; being the Burdett survey No. 2—320 acres—in El Paso county, Tex., on the east bank of the Rio Grande river, about 2½ miles below El Paso, known as "Survey No. 2:" Beginning at a stake, the southwest corner of survey No. 1; thence north 2,368 varas to rock mound; thence west 672 varas to rock mound; thence south 3,000 varas to a stake on the bank of the Rio Grande; thence down said river, with its meanders, to the place of beginning. (2) Appellees hold and own the foregoing described land by regular chain of title from Joseph Magoffin and wife down to themselves. (3) Both appellants claim the land in controversy as pre-emptors of the land in 1887, and as such pre-emptors they have complied with the terms of the then existing laws that permitted citizens of Texas to acquire public lands as pre-emptors, and have title to land, provided it was vacant at that time. (4) At the time the Burdett survey No. 2 was located, in 1858, the banks and channel of the Rio Grande, and low-water mark thereof, were several hundred varas north of where the bank and channel and low-water mark of the river were in 1887, when the pre-emption claims of appellants were filed. That the bank and channel and low-water mark of the river have since 1858, where the Burdett survey No. 2 originally abutted on it, receded from the north, and gone south several hundred varas. That this was occasioned by annual rises in the river from 1858 to the time of filing the pre-emption claims by appellants, and by the peculiar formation and shape of the banks at that point. The Burdett survey was situated on the north bank of the river, and called for a stake on the bank of the river, and to run down the river with its meanders. Land extending about the width, or more, of the Burdett survey No. 2, and about several hundred varas in distance, has since 1858, up to 1887; formed between the bank of the river, as it existed in 1858, to where it existed when the pre-emption claims were located, in 1887. It is this land upon which the appellants have located their pre-emption claims, and is the land in controversy. The shifting of the bank and channel of the river, and the formation of that land, was the result of the annual rises in the river during that period. That the river generally remained up at a high-water stage two or three months in each year. That after each rise the changes made in the channel and banks of the river could be seen and discerned, but they could not be perceived while the progress of changing was going on. That the change in the banks and channel of the river, and the low-water mark existing

when the pre-emption claims were located, or different from that existing when the Burdett survey was located, was not sudden, but was the result of the annual rises in the river during said period from 1858 to 1887. (5) That the said land so formed on the north side of the river, and the land in controversy, is a part of the Burdett survey No. 2, and is the result of accretion and alluvion. (6) The land upon which the pre-emption claims of appellants were located, and being the same land in controversy, was not vacant public domain, subject to location, at that time, but was a part of the Burdett survey No. 2, and the superior title thereto is in the appellees.

Carleton & Ruggles, for appellants. Davis, Beall & Kemp and Peyton F. Edwards, for appellees.

Fisher, C. J., (after stating the facts.) The appellants contend that the call in the Burdett survey for the stake in the bank of the Rio Grande river as it existed in 1858, the time when the survey was made, should control, and that it should not be extended in course and distance so as to reach the bank of the river as subsequently formed, and that the land formed between the old river, as it existed in 1858, and the new channel, was vacant land, and subject to the location of the pre-emption claims of appellants. Upon the other hand, appellees contend that the facts of this case call for an application of the law of accretion and alluvion; that the call of the Burdett survey for the bank of the river, with its meanders, will carry it to the middle of the channel or low-water mark of the river, as newly formed, and that the lands so formed since the location of the Burdett survey are the accretions thereto caused by the deposit of alluvion thereon, or the dereliction resulting from the gradual recession of the water to the new channel, and the gradual changing of the bed of the river. This, in effect, presents the diverse views of the parties to this controversy.

The main question we are called upon to decide is: Are the change in the bed of the river, and the increase and addition to the land, the result of alluvion or avulsion? The appellees contend that it is the former, and appellants, the latter. The accretion by alluvion belongs to the owner of the shore whose lands front on the stream, and to which the addition is made; also, such is the case where the accretion is the result of a dereliction occasioned by the gradual recession of the water from the land, and the making of a new channel. This right rests upon the consideration that, while the riparian owner is liable to lose soil by the action of the

water, he should also have the benefit of accretion resulting from the same cause. The principle is that "he who bears the incidental burdens of an acquisition is entitled to its incidental advantages; consequently, that the proprietor of a field bounded by a river, being exposed to the danger of loss from its floods, is entitled to the increment which from the same cause may be gradually annexed to it." Accretion by alluvion, or the addition and gains to the soil by a recession of the water and the channel of the river, must be by a process that is gradual and imperceptible; otherwise, the change falls within the meaning of avulsion, and such rapid and sudden change of the channel or banks of the stream will not bring about a change of boundary of the lands of the riparian proprietors. There is a conflict of authority as to what is a gradual and imperceptible change, so as to make the addition to the soil alluvion, or gain to the riparian owner by a recession of the water and channel of the stream. We believe the correct rule is announced in the cases of County of St. Clair *v.* Lovingston, 23 Wall. 46; Jefferis *v.* Land Co., 134 U. S. 187, 10 Sup. Ct. Rep. 518; and State of Nebraska *v.* State of Iowa, 12 Sup. Ct. Rep. 397,—where it is said that "though the witnesses may see, from time to time, that progress has been made, they could not perceive it while the progress was going on." The facts show that the Rio Grande is subject to annual rises that occur in the spring and summer of each year, and that continue for two or three months; that during the stage of high water it is a violent, swift, and turbid stream; that the bank of the river on the south side, in the republic of Mexico, opposite the land in controversy, is higher than on the north side of the river; that the force of the current strikes the south bank, and that during the period in which the accretion has been going on, as shown to exist in this case, the bank, during each rise, would cave in and wash away, and the channel of the river would move towards the south after each rise, and land would form on the north side; that that formation and change were noticed and discerned after each rise; some years the changes resulting from the rises in the river were greater than at other years; and that occasionally the progress and change made by the force of the current could be noticed while it was going on. But the evidence, as a whole, shows that the general effect produced by these annual rises in the river during the period from 1858 to 1887 was the cause of the accretion and addition to the soil on the north side of the river, and was not the result of sudden changes.

Upon this subject we quote at length from the opinion in the case of State of Nebraska *v.* State of Iowa, 12 Sup. Ct. Rep. 399: "It is contended, however, that the doctrine of accretion has no application to the Missouri river, on account of the rapid and great changes constantly going on in respect to its banks; but the contrary has already been decided by this court in Jefferis *v.* Land Co., 134 U. S. 178, 189, 10 Sup. Ct. Rep. 518. A question between individuals, growing out of changes in the very place now in controversy, was then before this court; and in the opinion, after referring to the general rule, it was observed: 'It is contended by the defendant that this well-settled rule is not applicable to land which borders on the Missouri river, because of the peculiar character of that stream, and of the soil through which it flows; the course of the river being tortuous, the current rapid, and the soil a soft, sandy loam, not protected from the action of water either by rocks or the roots of trees; the effect being that the river cuts away its banks, sometimes in a large body, and makes for itself a new course, while the earth thus removed is almost simultaneously deposited elsewhere, and new land is formed almost as rapidly as the former bank was carried away. But it has been held by this court that the general law of accretion is applicable to land on the Mississippi river; and, that being so, although the changes on the Missouri river are greater and more rapid than on the Mississippi, the difference does not constitute such a difference in principle as to render inapplicable to the Missouri river the general rule of law.' It is true that that case came here on demurrer to a bill, and it was alleged in the bill that the land was formed by 'imperceptible degrees', and that the process of accretion 'went on so slowly that it could not be observed in its progress; but, at intervals of not less than three or more months, it could be discerned by the eye that additions greater or less had been made to the shore.' The state of facts disclosed by this averment was held not to take the case out of the law concerning accretion, and, after referring to some English authorities, it was said: 'The doctrine of the English cases is that accretion is an addition to land coterminous with the water, which is formed so slowly that its progress cannot be perceived, and does not admit of the view that, in order to be accretion, the formation must be one not discernible by comparison at two distant points of time.' And then was quoted from the opinion in County of St. Clair *v.* Lovingston, 23 Wall. 46, these words: 'The test as to

what is gradual and imperceptible in the sense of the rule is that, though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on.' The case before us is presented on testimony, and not on allegation. But what are the facts apparent from that testimony? The Missouri river is a winding stream, coursing through a valley of varying width, the substratum of whose soil, a deposit of distant centuries, is largely of quicksand. In building the bridge of the Union Pacific Railway Company across the Missouri river in the vicinity of the tracts in controversy, the builders went down to the solid rock, 65 feet below the surface, and there found a pine log a foot and a half in diameter,—of course, a deposit made in the long ago. The current is rapid, far above the average of ordinary rivers; and by reason of the snows in the mountains there are two well-known rises in the volume of its waters, known as the 'April and June rises.' The large volume of water pouring down at the time of these rises, with the rapidity of its current, has great and rapid action upon the loose soil of its banks. Whenever it impinges with direct attack upon the bank at a bend of the stream, and that bank is of the loose sand obtaining in the valley of the Missouri, it is not strange that the abrasion and washing away is rapid and great. Frequently, where above the loose substratum of sand there is a deposit of comparatively solid soil, the washing out of the underlying sand causes an instantaneous fall of quite a length and breadth of the superstratum of soil into the river; so that it may, in one sense of the term, be said that the diminution of the banks is not gradual and imperceptible, but sudden and visible. Notwithstanding this, two things must be borne in mind, familiar to all dwellers on the banks of the Missouri river, and disclosed by the testimony: That, while there may be an instantaneous and obvious dropping into the river of quite a portion of its banks, such portion is not carried down the stream as a solid and compact mass, but disintegrates and separates into particles of earth borne onward by the flowing water, and giving to the stream that color which, in the history of the country, has made it known as the 'muddy' Missouri; and also that, while the disappearance, by reason of this process, of a mass of bank, may be sudden and obvious, there is no transfer of such a solid body of earth to the opposite shore, or anything like an instantaneous and visible creation of a bank on that shore. The accretion, whatever may be the fact in respect to the diminution, is always gradual, and by the imperceptible deposit of floating particles of

earth. There is, except in such cases of avulsion as may be noticed hereafter, in all matter of increase of bank, always a mere gradual and imperceptible process. There is no heaping up at an instant, and while the eye rests upon the stream, of acres or rods on the forming side of the river. No engineering skill is sufficient to say where the earth in the bank washed away, and, disintegrating into the river, finds its rest and abiding place. The falling bank has passed into the floating mass of earth and water, and the particles of earth may rest one or fifty miles below, and upon either shore. There is, no matter how rapid the process of subtraction or addition, no detachment of earth from the one side and deposit of the same upon the other. The only thing which distinguishes this river from other streams, in the matter of accretion, is in the rapidity of the change, caused by the velocity of the current, and this in itself, in the very nature of things, works no change in the principle underlying the rule of law in respect thereto. Our conclusions are that, notwithstanding the rapidity of the changes in the course of the channel, and the washing from the one side and onto the other, the law of accretion controls on the Missouri river, as elsewhere; and that not only in respect to the rights of individual land-owners, but also in respect to the boundary lines between states. The boundary, therefore, between Iowa and Nebraska is a varying line, so far as affected by these changes of diminution and accretion in the mere washing of the waters of the stream."

What is said here of the Missouri river is equally true of the Rio Grande. The fact that the Rio Grande, by virtue of the treaties between this government and Mexico—that of 1848, "Guadalupe Hidalgo," and that of 1853,—is regarded and treated as a navigable stream, does not relieve the question before us of an application of the general law of accretion. The principles of the law of accretion and alluvion apply to lands bordering navigable streams, as well as those not navigable. 1 Amer. & Eng. Enc. Law, 137; State of Nebraska *v.* State of Iowa, 12 Sup. Ct. Rep. 397; Jefferis *v.* Land Co., 134 U. S. 178, 10 Sup. Ct. Rep. 518; County of St. Clair *v.* Lovingston, 23 Wall. 62. This doctrine also applies to streams that are the boundary between two states or nations, unless there is something in the treaties between the two countries that controls or limits the application of the principle. There is no principle of international law that denies the right of alluvion to riparian owners abutting the international stream. This question is exhaustively discussed in the case of State of Nebraska *v.* State of Iowa, 12 Sup. Ct. Rep. 397. There

is nothing in the treaties between this government and Mexico that can be construed to affect the riparian owner's right of accretion and alluvion. But the fact that the Rio Grande is, by the treaties between the two nations, treated as a navigable stream, and that it is the agreed international line between the two countries, may have the effect of limiting the boundary line of riparian owners to the low-water mark of the stream, and not to the middle of the channel. But, be this as it may, it is unnecessary for us to decide whether the appellees' line goes to the middle of the stream, or the low-water mark, as in either event the appellees' boundaries would include all the land fronting the river. The Rio Grande at El Paso, fronting the land in controversy, while spoken of as a navigable stream, is not so, in the sense of the common law, where the tide ebbs and flows. The high-water mark is not the limit of the appellees' boundary, as would be the case if the Rio Grande was a navigable stream, within the meaning of the common law. Authorities supra; 2 Amer. & Eng. Enc. Law, 504, 505; Jones *v.* Soulard, 24 How. 41.

It is insisted by appellants that, notwithstanding the addition to the land fronting the river was the result of accretions and alluvion, the appellees' boundary should stop at the stake in the bank of the river as it existed in 1858, when the survey was made, because running the field notes of the survey course and distance from other points called for would locate the south line of the survey at the point where the bank of the stream was in 1858. It may be true in some cases that, although gains have resulted in the soil fronting the stream by accretion and alluvion, the line will not be extended so as to include such additions of soil where it appears by calls in the grant that the object called for at the river was designed to fix and establish the boundaries of the land, and that the termini should rest at the object, and not the stream. But such is not the case before us. It is apparent that the survey calls for the river and its meanders as one of the boundaries of the tract. These calls negative any purpose upon the part of the locator to leave any vacant land fronting the river not appropriated by his location. There is nothing in the evidence that shows that the call for the river as a natural object should be made to yield to other calls in the grant. 2 Amer. & Eng. Enc. Law, 504, 505; County of St. Clair *v.* Lovingston, 23 Wall. 62; Jefferis *v.* Land Co., 134 U. S. 187, 10 Sup. Ct. Rep. 518. We find no error in the record, and affirm the judgment.

PORTFOLIO OF MAPS